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Trade practice submittals. July 6, 1925.

Washington

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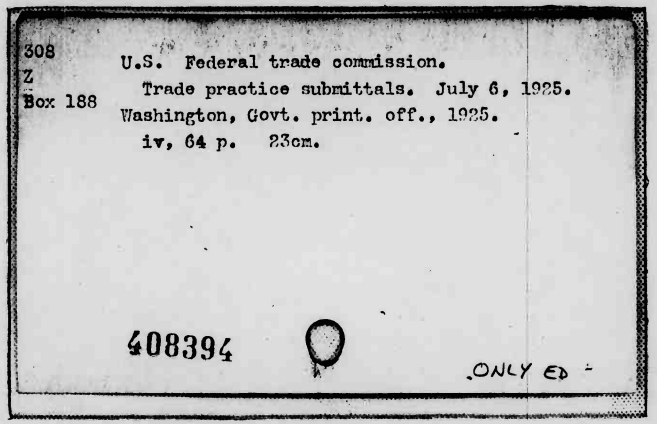

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FEDERAL TRADE COMMISSION

TRADE PRACTICE SUBMITTALS

: : : : JULY 6, 1925 : : : :

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JULY 6, 1925

WASHINGTON
GOVERNMENT PRINTING OFFICE
1925

FEDERAL TRADE COMMISSION

VERNON W. VAN FLEET, *Chairman.*
JOHN F. NUGENT.
CHARLES W. HUNT.
HOUSTON THOMPSON.
WILLIAM E. HUMPHREY.
OTIS B. JOHNSON, *Secretary.*

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TRADE PRACTICE SUBMITTALS

FOREWORD

The increasing interest in trade practice submittals makes necessary the publication of a more complete account of their operation, and this affords an opportunity for a more complete explanation of this form of procedure than has yet appeared.

Early in its history the commission was called upon to deal with situations where complaints from many parts of the country came to it in regard to alleged unfair practices in an industry by one competitor against another. The commission sought to devise some plan by which it could assist such an industry in eliminating alleged unfair practices before the commission had made an investigation and had reason to believe that complaint should issue. It frequently appeared that the major portion of those engaged in an industry wherein the use of some questionable trade practice prevailed were the victims rather than the originators of such practices, which they were obliged to follow or be placed at a serious competitive disadvantage. It further appeared that in many instances business men were unable to divorce themselves from such unfair practices, though anxious to do so, without outside assistance. It soon became, therefore, a matter of anxious consideration by the commission what means it could employ within the scope of its powers to aid in bringing about the abandonment of any unfair practices before it had made an investigation or determined whether in the interest of the public a complaint should issue. It was apparent that there was an opportunity for useful service if a suitable method of procedure could be found. The commission's organic act made no provision for such contingencies, and it was apparent that whatever procedure was devised would have to conform to the limitations imposed by that act and be enforceable by the procedure there laid down.

To meet these conditions the commission devised the procedure which has come to be called a trade practice submittal. The first experiment with it was in connection with the manufacture of gold-shell or gold-plated finger rings, November 25, 1918. A majority of the makers of such rings, after a hearing before a representative of the commission at the city of Providence, R. I., signed a stipulation by which they defined and undertook voluntarily to correct

abuses, and the results were beneficial to the industry and to the public.

Encouraged by the success of this effort, the commission, in March, 1919, called a meeting of the manufacturers of book and writing papers, with a view to the elimination from that industry of alleged misbranding. The meeting was well attended, but owing to the lack of a complete understanding of the commission's powers and purposes, no satisfactory formula was reached at that time. After the adjournment the matter was pursued by the association officials, and in July of that year the signatures of practically the entire industry were secured, again with the result of eliminating without the issuance of complaints, practices which had been the source of complaints, to the lasting benefit of the trade and the public.

From that time onward, encouraged by the success of its efforts and endeavoring to profit by mistakes, the commission has used the trade-practice submittal method whenever in its judgment conditions appeared to warrant it. Of that which has been accomplished this book is a record. The reports of the different submittals form the best account of what has been accomplished.

It will be useful to explain the nature of the proceeding called a trade-practice submittal.

In ordinary course, when application is made to the commission for the prevention of the use of unfair methods of competition in commerce, the commission makes a preliminary examination, and if this establishes a prima facie case of the use of unfair competition, and if it appears that a proceeding by it would be to the interest of the public, it issues a formal complaint stating the charges in that behalf. This is followed by a trial, similar to those conducted in a court, and finally by an order to "cease and desist," if the evidence sustains the charges.

A trade-practice submittal, on the other hand, is not an adversary proceeding, but originates in a request from the trade or industry which is itself disturbed by unfair practices and of which it desires to get rid. A trade practice submittal, however, does not always originate from a request from the trade. The commission may inaugurate it. This state of mind must, for practical reasons, be shown by a majority of the industry, either in numbers or production, or both, in their support of the request for the calling of the meeting. This insures that the meeting will be a voluntary one, upon the initiative of the industry itself, and not by coercion from any source. Having received such a request or petition, the commission issues, to all the members of the industry of which it has knowledge, an invitation, which is in no sense a summons, calling a meeting for the purpose of discussing the merits or demerits of practices current in the industry which have been indicated in the original presentation as unfair. This meeting is held in the presence of a commissioner, who does not, however, control it. The usual practice is for the representatives of the industry present to select their own chairman and secretary, and for a commissioner to act in a consulting and advisory capacity. At the close of the discussion, each of the practices which have been examined is taken up separately, and submitted to the meeting for an expression of opinion as to its fairness or unfairness.

If it is the practically unanimous opinion of the meeting that any of the practices of the industry which have been discussed are unfair, the commission receives that expression of the industry, when stated in the form of a resolution, as being founded on expert knowledge and business experience with respect to the practices in question. The commission considers the resolutions adopted by the meeting as a possible basis for future corrective action by it, but applies to them the tests of jurisdiction and judicial decisions which govern its own decisions. It is with these qualifications that the commission approves, disapproves, or withholds approval of the expressions of the meeting in its public announcement in reference to it.

While such an expression on the part of a representative body of an industry is given great weight by the commission, it represents no decision or judgment on the part of the commission. Its effect is, first, that as an expression of the opinion of the industry, it has a restraining influence upon those who might otherwise be tempted to indulge in unfair practices. It is a pledge to each member that, if he will conduct his business in a fair and honorable way, his associates will do the like. Its effect with the commission is that it is thereby informed of the opinion of the trade and becomes the keeper of their mutual pledge, with the assurance that, in any case of the violation of the resolutions by members of the industry, the machinery of the commission can be set in motion for the correction of such conduct, provided it amounts to a violation of law in the light of the decisions of the commission and the courts. Meanwhile, members of the industry are saved the annoyance and expense of being proceeded against on account of matters for which they are not primarily to blame, and the public is saved from the injury caused by the continuance of unfair trade practices.

A study of the trade practice submittals already held, as set forth herein, will show the classes of cases where this procedure is applicable; but in order to guard against misunderstanding and disappointment the mention of some limitations may be useful:

1. A proposal for the holding of a trade practice submittal must have the support of a sufficient proportion of an industry to warrant the expectation that a conclusive result will be obtained.

2. The commission endeavors to observe the convenience of participants in such matters as the times and places of meetings. It also endeavors to invite all the members of an industry, as well as to see

that all receive a statement of the results. The commission, however, can not assume responsibility for any failure to receive notices of such meetings or statements of the results, and neither can such failure be held to create exemption from liability to the subsequent invoking of the commission's corrective powers.

3. A trade practice submittal can not be utilized to enable an industry to do anything, under the assumed sanction of the commission, which it could not otherwise lawfully do.

4. A trade practice submittal is applicable only to groups, but not to individuals.

5. The value of a trade practice submittal being dependent upon a consensus of opinion of those engaged in the industry, the conclusions reached must be unanimous, or practically so, in order to carry the greatest weight.

6. It is not to be inferred from the mere fact that such a meeting has been held and certain resolutions adopted that the commission has approved the conclusions reached, except as it may indicate its concurrence. It is occasionally the case that these meetings consider questions which are matters of ethics rather than of unfair competition and questions involving problems in economics rather than law. The commission is careful, in reviewing the action of an industry, not to approve the condemnation of any practice which it is not within its power to correct, within the purview of the acts which it administers. When it does give the stamp of its approval to resolutions that fact shows that it has considered not merely the merits of the practices involved but also the scope of its corrective powers. Thus in some cases the commission has approved resolutions in their entirety, while in others it has approved a part and received and filed the rest as an expression of the opinion of the trade. In still other instances the commission has declined to approve the resolutions adopted, but has itself suggested a definition applicable to the subject matter.

The beneficial results of this form of procedure are now well established, and the commission is always glad to receive and consider requests for the holding of trade-practice submittals.

GOLD-PLATED FINGER RINGS

WASHINGTON, D. C., *November 25, 1918.*

The Federal Trade Commission has had under investigation the methods of branding used by manufacturers of gold shell, gold filled, and gold plated finger rings, it having been alleged that the methods in current use did not sufficiently protect the purchasing

public. After consultation with the principal manufacturers, the commission worked out, with the aid of the Bureau of Standards, a method for such branding which it appeared would be adequate for the purpose intended. All the principal manufacturers of such rings, located at the city of Providence, R. I., were called into conference and readily agreed to adopt the commission's recommendations, and have bound themselves by written agreement with the commission to use on gold shell, gold filled, or gold plated finger rings no mark or method of branding in itself indicative of gold value or wearing quality other than the following:

The words "gold shell" preceded by the designation of the alloy of gold used in the shell, which shall be preceded by a fraction designating the correct proportion of the weight of the shell to the weight of the entire ring; illustrated by "$\frac{1}{20}$ 14-k gold shell," in which case $\frac{1}{20}$ of the entire ring by weight is 14-k gold and constitutes the outer shell.

The stipulation does not oblige the manufacturers to stamp the rings, but applies only in case they are stamped, and the taking effect of the stipulation is set for May 1, 1919.

PAPER INDUSTRY

WASHINGTON, D. C., *March 28, 1919.*

The attention of the Federal Trade Commission having been called to a condition existing in the paper industry in regard to the use of certain classes of names for papers, which it is believed could be improved, a conference was arranged with your committee, consisting of Messrs. S. L. Willson, Walter J. Raybold, William C. Ridgway, and yourself, representing the industry. At this conference, at which Commissioner Victor Murdock presided, and was assisted by Attorney Edwin S. McCrarey, it was thought that certain changes would be beneficial; therefore, the commission suggests the adoption of the following:

(1) Papers not to be labeled "handmade" unless actually made by hand and not by machine processes.

(2) Papers that are given fabric or other material names because of a finish applied to them intended to resemble such fabric or material, not to be labeled, advertised, or sold under such name, unless a qualifying word, or words, be used to indicate that such fabric or other material name is applied to such paper to indicate such finish only; thus: "Linen Finish," "Nainsook Finish," "Onyx Finish," etc.

In July the signatures of practically the entire industry were secured, resulting in elimination of practices which had theretofore been the causes of complaints.

CREAMERY INDUSTRY [1]

WASHINGTON, D. C., *October 3, 1919.*

There having come to the Federal Trade Commission various complaints of unfair practices in the creamery industry, notably in the Mississippi Valley, there being a striking similarity in the complaints made, and these complaints covering a rather wide range, the commission considered whether or not, before issuing its formal complaint in individual cases, it would not be better to determine how widespread and general were the trade practices complained of. This, to the end that if a condition should be revealed that was so broad in scope that individual proceedings might not result in complete and speedy remedy, a more general treatment of the difficulty might be given.

On invitation of the commission, representatives of the industry to the number of about 40, from six or seven States, met with Commissioner William B. Colver, assisted by Attorney M. M. Flannery, in Omaha on October 3, 1919.

An informal discussion was had and it was arranged that definite action should be deferred until there could be brought about a meeting more completely representative of the industry and covering a wider area.

As a result on November 3, 1919, the commissioner again met with representatives of the industry to the number of about 125, coming from 14 States.

Between the first and second meetings, the commission had invited the members of the industry in this section of the country to inform the commission, privately, in writing, of any and all trade practices which they considered unfair and against the public interest.

A basis for the work of the second meeting was provided in a memorandum prepared by a group of men in the industry at a meeting held previously. This memorandum provided a groundwork for the meeting but did not limit the scope of matters considered.

At the outset each of those in attendance declared his purpose to aid in the formulation of rules defining, expressing, and prohibiting methods, practices, and acts recognized as unfair, wrongful, invalid, or detrimental to the public and to the industry.

The commissioner presided at the meeting and each practice which came up for consideration as to its fairness in the public interest

[1] Among cases involving practices condemned by the industry in which the commission issued orders to cease and desist are the following:
B. S. Pearsall Butter Co., Docket No. 550.
Blue Valley Creamery Co., Docket No. 1064.
Worthington Creamery & Produce Co., Docket No. 1087.

and soundness as business policy was the subject of free and full discussion, each practice being discussed and voted upon separately.

The commissioner stated to the meeting that the Federal Trade Commission was making no rules, expressing no opinion, and rendering no order; nor was the purpose of his visit to interfere with or attempt to direct the business conduct and practices in the creamery industry. He further stated that his visit was for the purpose of gathering the best judgment of the representative members of the industry as to whether certain practices were fair or unfair and were in or against the public interest. It was understood that the judgment of the industry, as expressed, should be for the guidance of the commission and should be regarded as, prima facie, law merchant for this industry.

It was further understood that in any case where any person present or the interest which he represented, or any engaged in the industry and not present or represented at the meeting, disagreed with the majority judgment of the meeting as to the unfairness of a practice or practices named, he was not bound either by order of the commission or by the judgment of the meeting to refrain from such practice. But it was clearly understood, that if any proposed to continue any practice condemned at the meeting, then he would give notice of his intention so to do, to the commission, and in case his conduct should cause complaint to be made against him, then the commission would proceed under its law to try the matter out.

It was clearly understood that the commission in trying any complaint which might hereafter arise for violation of any practice condemned by this meeting, would regard the judgment of the meeting as representing a formally expressed judgment of the industry, but subject to being overthrown by evidence to the contrary that might be produced in individual cases either as to its effect on the public interest or its effect in competition.

With the foregoing in mind the attention of the meeting was directed to the discussion of and voting upon unfair practices, and while it was clearly the spirit of the meeting to bring up for consideration all known unfair practices, still it was definitely understood that the discussion and judgment was not inclusive and that the omission of any practice from condemnation by this meeting could not be held to be an approval of it.

Certain practices were considered and in nearly every case condemned by unanimous vote. In every case the condemning vote was by a substantial majority. The following acts, methods, and practices were declared unfair, harmful, bad business practice, and unlawful, and therefore to be refrained from:

I. *Resolved*, That the willful interference by any person, association, or corporation, by any means or devices whatever with any existing contract be-

tween an employer and employee or agent, of such employer, in or about the production, manufacture, transportation, purchase, or sale of any dairy product or the performance of any contractual duty or service connected therewith, such interference being for the purpose or with the effect of dissipating, destroying, or appropriating in whole or in part, the patronage, property, or business of another engaged in such industry, is hereby declared unfair.

II. *Resolved*, That the intentional overtesting, undertesting or in any manner making or declaring a false return or report on the test of the quantity of any dairy product or any constituent thereof, purchased or sold, is hereby declared unfair.

III. *Resolved*, That the use, without the consent of the owner, of any can, cream station equipment, or other property, used or employed in the shipment, purchase, or sale of any dairy product, with the intent or effect of appropriating the patronage, property, or business of another, is hereby declared unfair.

IV. *Resolved*, That furnishing or lending to any producer, dealer, or shipper of dairy products any can, cream-station equipment, or other property for the purpose and effect of influencing shipments of such products to the furnisher or lender of such article or property is hereby declared unfair.

V. *Resolved*, That the making, causing, or permitting to be made or published any false or untrue statement of or concerning the business policies or methods of a competitor is hereby declared unfair.

VI. *Resolved*, That paying or rendering, directly or indirectly, to any agent or employee of a common carrier any consideration or reward for the purpose or with the effect of influencing such agent or employee to solicit patronage or divert any shipments of dairy products from the originally intended consignee is hereby declared unfair.

VII. *Resolved*, That obtaining any information from a competitor by making any false or misleading statements or misrepresentations or by false impersonation of one in authority or by any method of espionage is hereby declared unfair.

VIII. *Resolved*, That failure to pay or render in accordance with advertisement or holding out to the shipper or his representative the full price for dairy products purchased; failure to deduct full transportation cost when such product is purchased on delivered basis; failure to deduct actual cost of hauling when such products are gathered by wagon or truck is hereby declared unfair.

IX. *Resolved*, That the purchasing or offering to purchase dairy products at prices not warranted by market or trade conditions or paying higher prices to one class of shippers or sellers than to another, or the paying of different prices at different points at the same time, except differences occasioned by freight rates and quality of the commodity bought, *or the paying of the same price at nonchurning points as at churning points*,[1] or differences made in good faith to meet fair competition, as distinguished from price discrimination intended to or having the effect of the creation of a monopoly, is hereby declared unfair.

X. *Resolved*, That where cream is purchased on what is known as the station plan the payment of any commission in excess of 3 cents, including station expenses of every kind and character, is against public policy and is hereby declared unfair.

XI. *Resolved further*, That the giving of premiums or other valuable things as an additional reward or compensation is unfair.

[1] Italics indicate amendment, which was passed by a vote of 67 to 18.

XII. *Resolved*, That it is the sense of this meeting that adjustments in the sale of butter should be made on a half-pound basis instead of the one-pound basis as at present.

XIII. *Resolved*, That the furnishing of free cream cans to farmers is a tremendous waste and is considered bad practice.

The meeting and each of its members formally declared that with respect to the foregoing 13 practices:

(*a*) That there shall be no discrimination in the application of these rules to a situation or transaction whether carried on either interstate or intrastate.

(*b*) That there shall be no distinction in the application of said rules to any given situation or case as between individuals, copartnerships, associations, or corporations, the observance of the terms or provisions of these rules and regulations being imposed alike and without discrimination upon all classes of persons or organizations engaged in the business contemplated by these rules and regulations.

(*c*) That full and complete recognition of the authority, jurisdiction, and plenary power of the Federal Trade Commission, in accordance with the provisions of chapter 311 of the United States Statutes at Large, entitled "An act to create the Federal Trade Commission," etc., which became effective September 26, 1914, be declared and acknowledged.

The above declarations having thus been submitted by the industry to the Federal Trade Commission, the commission in turn submits them to the individual members of the industry in the hope that the industry as a whole will be benefited and the public interest served.

If any of these declarations is believed to work injustice upon the trade or upon the public or upon any party to the trade, whether represented at the meetings or not, the Federal Trade Commission, upon application for complaint, will promptly try the issue, receiving all relevant testimony as to any particular case. Until testimony to the contrary is produced, however, the commission will regard as conclusive the judgment of the trade in declaring such practices to be in fact unfair.

By direction of the commission, as attorney for the commission in charge of this matter, I am submitting the foregoing to the industry as a memorandum of the decisions and effect of the meetings. If any does not agree with this interpretation he is invited to question it; unless questioned it will be held to be binding upon the trade and advisory to the commission as above set forth.

M. MARKHAM FLANNERY, *Attorney.*

REBUILT TYPEWRITER INDUSTRY

WASHINGTON, D. C., *February 24, 1920.*

The Federal Trade Commission announced to-day that it has invited about 200 manufacturers and dealers in secondhand, repaired, and shop and factory rebuilt typewriters from all parts

of the country to participate in a trade practice submittal in Washington, February 27 next, at 10 o'clock.

The calling of a trade practice submittal is a proceeding which has been followed with success by the commission in other lines of industry whose members have signified a desire for the commission to aid them in eliminating from their industry uneconomic and other harmful practices which may have developed.

The trade practice submittal announced is a result of numerous applications by members of the industry to the commission for the issuance of complaints against other members of the same industry. Various alleged unfair practices in the rebuilt typewriter industry have been noted in these applications. A brief summary of the same frequently occurring charges is that factory rebuilt machines are sometimes sold as new machines; that machines rebuilt in independent shops are sold as having been factory rebuilt, and that machines which have been merely overhauled or superficially repaired have been sold as totally rebuilt machines. Another charge that frequently occurs is that the purchasers of such machines are kept in ignorance of the true character of them.

Correction of such unfair trade practices, when proven, is effected by the commission through formal proceedings which terminate in an order to "cease and desist," generally against individual respondents under the provisions of section 5 of the Federal Trade Commission act, which in part reads:

That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

However, when many applications for complaint containing a striking similarity of charges in any particular industry are received, the commission, as in the present instance, has on numerous occasions invited the industry to attend a trade practice submittal.

At the coming conference the commission hopes to be able, with the help and advice of the industry itself, to eliminate those harmful practices which may have developed. Such a submittal will not mean the quashing of the separate proceedings that are now on its docket.

The commission's experience has been that many lines of industry are anxious to be rid of unnecessary suffering because of costly and ruinous unfair competition, often practiced in self-defense.

As a basis for deliberation the commission has requested the men actually making and dealing in rebuilt machines, as experts in their field, to (*a*) define such practices as they consider unfair, and (*b*) assist in the elimination of the methods which those engaged in the business themselves recognize as unfair. Names of the offending parties are not called for, but merely description of objectionable practices which may generally obtain in the industry.

Such a trade practice submittal is not legally binding on any of the parties at interest and leaves the commission free to perform its full duty under the law of unfair competition.

Commissioner Huston Thompson presided at the meeting of February 27, 1920, and was assisted by Attorney W. C. Reeves. The following resolution was adopted by the industry:

Resolved, That the term "rebuilt" as applied to used typewriters shall be deemed to include machines which have been taken completely apart, each part carefully cleaned, examined, and tested, and if it shows signs of wear it is discarded and replaced by a new part, the frame cleaned and, if needed, japanned or reenameled, which process requires a baking oven; all tarnished bright parts renickeled by electrolite process, all broken or battered type replaced by new type and the type aligned, all lost motion taken up; when reassembled the machine should be inspected and adjusted by competent workmen, so that for all practical purposes it is substantially as good as a new machine of the same model and approximate serial number.

Resolved, That the following practices by anyone engaged in the business of dealing, in interstate commerce, in used or rebuilt typewriters, shall be deemed to be unfair methods of competition and prohibited by section 5 of the Federal Trade Commission act, namely:

The selling or offering for sale of rebuilt typewriters as new machines.

The selling or offering for sale as rebuilt machines, typewriters which have been given only superficial repairs, as in the case of removing the carriage, brushing the exposed parts without taking the machine completely apart, applying a small amount of enamel paint or varnish and permitting it to dry without baking it in an oven, or giving to a machine only such repairs as are necessary to enable it to be operated without rebuilding it as defined herein.

Guaranteeing a machine by a dealer who is not himself a competent workman and who does not employ a skilled typewriter repair man or service man, with the result that the dealer does not pretend to have workmen keep a guaranteed machine in repair and will not answer service calls when customers make complaints.

Making misleading guaranties of machines sold on mail orders long distances from the place of business of the dealer, which renders it impossible for the dealer to keep the machine in repair for the period of the guaranty.

Advertising that the rental for a machine is $5 for three months, while the rental is $5 and upward, and the machines which are rented for the minimum rental are old, dilapidated, discarded machines.

BUTTER MANUFACTURERS [2]

WASHINGTON, D. C., *April 2, 1920.*

The Federal Trade Commission has received complaints of an alleged unfair method of competition practiced generally by manufacturers engaged in shipping butter, for resale, to Texas, Arkansas, Oklahoma, and other States of the Southwest.

To afford a remedy more speedy than could probably be obtained by the issuance of formal complaints, representatives of manufacturers competing for the butter trade of the Southwest were invited to assemble at Dallas, Tex., on April 2, 1920, for the purpose of furnishing the commission the opinions of those engaged in the industry (but more particularly those making use of the practice complained of) as to whether or not the practice was, in fact, fair or unfair, and whether it operated for or against the interest of the public and of the industry. Attorney M. Markham Flannery of the commission's staff presided. After informal discussion the representatives present expressed their unanimous opinion in the form of a resolution as follows:

Whereas, there now exists and for some time has existed among manufacturers and makers of butter who ship or sell their product in the southwestern section of the United States, a practice of packing in cartons, prints and rolls, unusual or odd-sized quantities of butter, which quantities vary in weight from the recognized standards of one pound, one-half pound, and one-quarter pound;

Whereas, this practice has been so widespread in the Southwestern States that any manufacturer or maker desiring to compete in the markets thereof is compelled as a matter of self-protection to adopt the practice above described;

Whereas, notwithstanding that labels bearing the true weight of butter contained in the prints, rolls, or cartons are usually placed thereon, purchasers, prospective purchasers, and the public generally, are subject to deception by reason of said practice and are likely to be led into the belief that they are purchasing and receiving standard weights of butter, when in truth and in fact they are receiving less than standard weights.

Now, therefore, We, butter manufacturers assembled in open meeting, condemn the practice above described as a method of unfair competition and as against the public interest, and we hereby petition the Federal Trade Commission to bring its action against any and all manufacturers, makers, or shippers of butter who, after August 1, 1920, sell or offer for sale, in cartons, rolls, or prints, butter in quantities or weights other than the standard weights of 16 ounces, or of 8 ounces, or of 4 ounces, or who ship or sell, or offer for sale, butter in such standard weight packages, prints, rolls, or cartons, upon any of which is not marked the net weight of the butter contained therein, in accordance with subdivision (c) of Regulation 29, of the "Rules and Regulations for the enforcement of the Food and Drug Act" as amended (34 Stats. 768), and which as published by the Department of Agriculture reads as follows:

"(c) The statement of the quantity of the contents shall be plain and conspicuous, shall not be a part of or obscured by any legend or design, and shall be so placed and in such characters as to be readily seen and clearly legible when the size of the package and the circumstances under which it is ordinarily examined by purchasers or consumers are taken into consideration."

[2] Among cases involving practices condemned by the industry in which the commission issued orders to cease and desist are the following:
Mountain Grove Creamery Ice & Electric Co., Docket No. 1041.
Wichita Creamery Co., Docket No. 1042.
Meriden Creamery Co., Docket No. 1043.
Ozark Creamery Co., Docket No. 1221.

PYROXYLIN PLASTICS INDUSTRY [3]

WASHINGTON, D. C., *May 17, 1920.*

The Federal Trade Commission to-day announced the result of a trade practice submittal with the pyroxylin plastics industry at Washington, D. C., on May 17, 1920.

The conference was conducted by Acting Chairman Huston Thompson on behalf of the commission in the public interest, with Attorney W. C. Reeves assisting. The trade was represented by delegates from the Pyroxylin Plastics Manufacturers' Association, the Celluloid and Tortoise Shell Association, the Celluloid and Metal Button Manufacturers' Association, and the Horn and Celluloid Manufacturers' Association of Leominster, and by numerous manufacturers of articles fabricated from the basic material, also wholesale and retail dealers in the finished product.

The trade practice submittal was called by the Federal Trade Commission to discuss charges of misbranding of various articles made from compounds known commercially as "Celluloid," "Pyralin," "Fibreloid," "Viscoloid," "Xynolite," "Acwelite," etc. Various applications having come to the commission from time to time for the issuance of complaint charging unfair methods of competition, and it appearing that articles made from the foregoing compounds have been branded, advertised, and sold by various dealers as "ivory," "tortoise shell," "amber," "pearl," "jade," "jet," "coral," etc., the commission considered the question of a practical way of eliminating such trade practices as the trade itself disapproves. Preliminary conferences with the industry were held with the object of having those engaged in the industry, as experts in their line, define such practices as they considered unfair and to make recommendations as to ways and means of eliminating such practices.

[3] Among cases involving practices condemned by the industry in which the commission issued orders to cease and desist are the following:
Palais Royal, Docket No. 783.
People's Drug Store, Docket No. 784.
Louis K. Liggett Co., Docket No. 844.
Atlantic Comb Works, Docket No. 920.
Hyman & Zaslav, Docket No. 948.
B. Raff & Sons, Docket No. 973.
Holsman Co., Docket No. 981.

At the preliminary conference a committee was appointed to prepare a report to the whole conference at an adjourned meeting, which was subsequently called for May 17, 1920. At this adjourned meeting Commissioner Thompson outlined the purpose and effect of any action to be taken and explained that such action would be considered by the commission thereafter in determining in indiyidual applications for issuance of complaints whether the facts upon which such applications were based were sufficient to warrant the commission in concluding that it had reason to believe that some one was using unfair methods of competition, and whether a proceeding by the commission would be in the public interest; that such action of the conference would be only advisory and not binding on the commission, but that due regard would be given to any action by the conference which condemned certain practices as unfair.

At the adjourned meeting on May 17, 1920, the committee of the industry submitted the following report, which was adopted by the whole conference of the industry and submitted to the commission as the action and recommendations of the conference:

WASHINGTON, D. C., *April 5. 1920.*

To the Conference on Trade Practices, Pyroxylin Plastics Industry.

GENTLEMEN: The undersigned committee has been appointed and presents this report by virtue of the following resolutions adopted at the conference of representatives of the pyroxylin plastics industry, which was called by the Federal Trade Commission, and which met in the city of Washington, D. C., March 8, 1920:

That a committee of four delegates from the four trade associations represented at this meeting, to wit: The Pyroxylin Association, the Celluloid and Tortoise Shell Association, the Celluloid and Metal Button Manufacturers' Association, and the Horn and Celluloid Manufacturers' Association of Leominster, be appointed by their respective associations to consider the questions of alleged unfair trade practices relating to the industry, and to draw up a report which, after being approved at an adjourned meeting of this body, shall be presented to the Federal Trade Commission.

That Mr. Lounsbury be made permanent chairman of this conference and chairman ex-officio of all committees.

Your committee, after meeting and carefully considering the several trade practices brought up for discussion at the above-mentioned Washington conference and listed below, submits the following conclusions with the approval of the different trade organizations represented by its membership:

1. *Inflammability of merchandise.*—On the question of marking the material in any way to indicate its possible inflammability, our opinion is:

(*a*) That the infinitely various forms and sizes in which the material reaches the public, both as solids and liquids, making it utterly impracticable to brand it in any way, the material, in solid forms, ranging to articles as small as shoe eyelets, push buttons, hairpins, eyeglass rims, buttons, etc., and as liquids in the form of varnishes, cements, airplane dopes, etc.

(*b*) That the material is not more inflammable than many other articles in every day use, of which the practicability or desirability of marking as inflammable has never been raised; and we do not regard the mere failure to mark as an unfair trade practice.

(*c*) That the discontinuance of the use, in a substantive sense, of such terms as ivory, jade, jet, amber, coral, shell, etc., hereinafter recommended, would, of itself eliminate any possible impression in the mind of the public that the materials are of the same noninflammable character as those they imitate.

2. *Branding of merchandise.*—On the question of branding the merchandise by any name which will show its imitative or substitute character, we feel that this is likewise impossible on account of the great variety, size, and form of the articles into which the material is fabricated, and that mere failure to mark is not an unfair trade practice.

3. *Use of designating terms.*—We are opposed to the use of the words "Ivory," "Shell," "Amber," "Jade," "Coral," etc., in any other than an adjective sense, and then only when coupled with the name of the material or some other qualifying term, such as color, finish, etc. Illustrative of the foregoing, the following and similar terms would be permissible: "Ivory Celluloid," "Ivory Pyralin," "Ivory Fiberloid," "Ivory Viscoloid," "Ivory Xynolite," "Ivory Acwalite," etc., "Ivory Color Celluloid," etc., "Ivory Color," "Ivory Color Dressing Combs," "Ivory Finish Combs," "Imitation Ivory," "Imitation Shell," etc. The following and similar terms would be objectionable terms: "French Ivory," "Parisian Ivory," "Tortoise Shell," "Tortoise-Shell Eyeglasses." "Ivory Combs," "Florentine Shell," "Ivory Toilet Sets," "Pyralin Ivory," "Jade Necklaces," "Coral Necklaces," "American Ivory," etc.

We are further opposed to the use of the words "French," "Parisian," or any other geographical designations in connection with the material or articles fabricated therefrom, unless they truly express the point of origin and are coupled with some other qualifying term, such as color, finish, etc. Under the foregoing the terms "French Ivory," "Florentine Shell," etc., would be objectionable, while "French Ivory Finish" would be permissible if the thing in question originated in France.

4. *Standardization of sizes.*—The question of the standardization of sizes, tentatively listed at the Washington conference, this committee does not regard as in any way involved in the points raised by the Federal Trade Commission.

5. *Generic term.*—On the question of abandoning the use of the existing terms "Celluloid," "Pyralin," "Fiberloid," "Viscoloid," etc., and adopting one generic term to designate the material, regardless of by whom manufactured, our finding is:

(*a*) That all of the foregoing names being registered as trade-marks, and all having been in use for such a period of time as to have become valuable property rights, none of the proprietors thereof is willing to surrender his own trade-mark or to adopt the trade-mark of any other manufacturer.

(*b*) We can think of no other one term applicable to the material in question which would better inform the public as to its character of purpose than those already in use.

(*c*) Even if the American manufacturers of the material could agree upon some common designation, the designation of similar materials manufactured abroad and imported into this country could not be controlled.

HENRY RAWLE,
Representing the Pyroxylin Plastic Manufacturers' Association.
JESSIE I. RICE,
Representing the Celluloid and Tortoise-Shell Association.
LOUIS ROSENBERG,
Representing the Celluloid and Metal Button Manufacturers' Association.
B. W. DOYLE,
Representing the Horn and Celluloid Manufacturers' Association.
RALPH R. LOUNSBURY,
Chairman, ex officio.

The foregoing report and recommendation was accepted by the commission and placed on file. In accepting the report of the industry's policy the commission stated its position to be as follows:

If in the opinion of anyone interested in the industry or affected by the action of the conference such action be deemed to work injustices or fall short of affording to the purchasing public adequate relief from improper conditions heretofore existing in the industry, the commission will, upon application, issue complaints in proper cases, so that determination may be had of any matters in controversy within the scope of the power of the commission.

In regard to marking or branding of the industry's product the commission does not attempt to force the members of the industry to brand or mark their goods as to quantity, quality, or substance. When, however, the members of the industry do mark or brand their goods, such marks or brands shall be so definite and correct as not to deceive the purchasing public with respect to the quantity, quality, or substance of the goods purchased.

PACKAGE MACARONI INDUSTRY

WASHINGTON, D. C., *June 25, 1920.*

This memorandum is prepared for distribution in the package macaroni industry of the United States with the request that criticism and suggestion be freely offered by any member of the industry if any believe that the conclusions reached by the representatives of the industry and communicated by them to the Federal Trade Commission are not well founded in any particular or if there are other and further abuses of sufficient importance that they should be suggested by the commission to the industry as proper subjects for examination at a meeting to be called for that purpose.

In the absence of any substantial negative criticisms the commission will incline to accept the judgments of the representatives of the industry as expressed to the commission on June 25, 1920, as being acceptable to the industry as a whole. While at that time it was only sought to select the most important and outstanding unfair practices, it is generally understood that there are other and minor things, the propriety of which might properly be questioned. But it seemed to be the judgment of the representatives of the industry that proposed improvements would not be facilitated if it went too much into detail at this time.

A considerable number of complaints reached the Federal Trade Commission, both from the members of the package macaroni industry itself and from other sources, with respect to certain practices which had grown up in the industry. These were followed by a

request on the part of a group in the industry for a trade-practice submittal.

The commission submitted the question as to the advisability of a trade-practice submittal to the officers of the National Association of Macaroni Manufacturers and was advised that such a proceeding would be most desirable according to the view of the industry.

The association held its annual meeting at Niagara Falls, Ontario, early in the week of June 25, and later representatives of the national association, together with representatives of manufacturers not members of the association, met with the commission at Washington on June 25 for the purpose of freely discussing and advising the commission of the best judgment of the industry as represented at the meeting, with respect to certain practices which had been complained of to the commission, and were apparently the subject of general complaint in the industry itself.

The commission sought to give notice of the proposed meeting at Washington to as many manufacturers as possible, but it had at hand only inadequate lists, and for that reason the notice was not as general as the commission would have desired. However, the actions taken by the representatives of the industry on June 25 were understood to be tentative and were to be submitted to the industry at large for suggestion and criticism. This is the purpose of the present memorandum which is addressed to the industry.

It may be well to explain somewhat in detail the nature of the proceeding, which is called a trade-practice submittal, in order that the men in the industry may understand exactly what was done on June 25, by whom it was done, and its effect.

When complaints come to the commission, alleging unfair methods of competition in commerce, the ordinary proceeding is for the commission to receive such an application for complaint, make a preliminary ex parte examination, and if such preliminary examination seems to establish a prima facie case of unfair practices, to issue a formal written complaint, provided, of course, it is found that the public interest is involved.

It should be understood that a formal complaint issued by the commission is not a judgment by the commission but simply a declaration that a further and formal proceeding is deemed to be in the public interest.

In certain circumstances, as, for example, when an unusually large number of complaints relating to a single industry are received within a short space of time, or when an industry itself seems to be perturbed over practices which are going on and which, if eliminated, would leave the industry more free to discharge its duty of service to the public, a trade practice submittal may be used by the com-

mission as a means for solution instead of the more formal proceedings.

This trade practice submittal consists of an invitation, which is in no sense a summons, for the whole industry or its representatives to meet together in the presence of the commission and discuss the merits and demerits of practices which have been complained of to the commission and any other practices which may be brought to the attention of the meeting.

At the end of the discussion, each of the practices which have been examined are taken up separately, are submitted to the industry for an expression of opinion as to their fairness or unfairness, their usefulness or harmfulness. The commission does not participate in the meeting except to ask questions which will tend to bring the whole matter clearly into the record.

If the practically unanimous opinion of the representatives of the industry condemns a given practice, the commission receives that expression of the industry as being founded on expert knowledge, business experience, and peculiar familiarity with the industry, with respect to the condemned practices, and likewise the sanctioning of a practice by the industry, even though the propriety of that practice has been questioned by application for the issuance of a complaint, is similarly regarded as being the expression, based upon the experience of the industry and its business judgment.

Such a practically unanimous expression on the part of a representative body of an industry is given great weight by the commission in considering such practices. It should be understood that it represents no decision or judgment on the part of the commission and is in no sense binding upon anyone not present at the meeting. Nor indeed is it binding upon anyone who is present at the meeting but who dissents from the majority opinion. The effect is that the weight of opinion of the industry has been communicated to the commission and that thereafter the commission will feel it to be its duty in case complaints are made to it of a continuance of the condemned practices on the part of any member of the industry, to issue its formal complaint, after inquiry and the public interest determined, in order that by means of a formal and orderly proceeding with an opportunity for subsequent court review, the judgment of the industry may be subjected to the final test of the courts. Also in case of a division of opinion on any given practice, the commission considers the question to be so much in doubt that it should be left entirely open to be challenged, if any one desires to challenge it, and made the subject of a more formal proceeding.

To sum up, then, the trade practice submittal amounts to a request on the part of the commission to a given industry that it give its opinion with respect to the fairness or unfairness of any

trade practices which have grown up or are growing up and that this opinion is received by the commission as the best and most authoritative judgment then obtainable, but that this judgment may be challenged by any member of the industry and thereafter be made the subject of a more minute examination in a proceeding around which are thrown all the safeguards of a proceeding in court.

In a trade practice submittal it is deemed to be proper for the members of the industry to discuss any and all subjects pertaining to the conduct and management of business and to any and all trade practices. A subject which is not deemed to be proper to be discussed is any question which bears on prices or price fixing.

When the meeting assembled at the offices of the Federal Trade Commission at 10.15 a. m., Friday, June 25, 1920, there were present:

Chairman Murdock, of the Federal Trade Commission; Commissioner Colver, and Commissioner Pollard.

Commissioner Gaskill was engaged on another matter but took his place in the meeting soon after it opened.

The following representatives of the package macaroni industry were present:

Dr. Benjamin R. Jacobs, Washington, D. C., representing the Bureau of Chemistry, Department of Agriculture.

James F. Williams, Esq., Minneapolis, Minn., representing the creamery company, and president of the National Association of Macaroni Manufacturers.

William A. Tharinger, Esq., Milwaukee, Wis., representing The Tharinger Macaroni Co.

F. W. Foulds, Esq., Chicago, Ill., representing the Foulds Milling Co.

H. H. Robinson, Esq., Cleveland, Ohio, appearing on behalf of the Cleveland Macaroni Co.

H. E. Gooch, Esq., Lincoln, Nebr., appearing on behalf of the Gooch Food Products Co.

L. A. Speiss, Esq., Southern Building, Washington, D. C., representing the Armstrong Bureau of Related Industries.

Julian Armstrong, Esq., Chicago, Ill., appearing on behalf of the Armstrong Bureau of Related Industries.

Montague Ferry, Esq., Chicago, Ill., appearing on behalf of the Armstrong Bureau of Related Industries.

R. B. Brown, Esq., Cincinnati, Ohio, representing the Beggs Cereal Products Co.

H. D. Graham, Esq., Philadelphia, Pa., representing the American Macaroni Co.

Edward Vermylen, Esq., Brooklyn, N. Y., representing A. Zeraga's Sons.

A considerable number of other gentlemen were present, but they did not leave their names and addresses to be included in the list of formal appearances.

After explaining the nature of the proceeding, the meeting was turned over to the representatives of the industry. The meeting continued in continuous session until 2.40 p. m., and the following judgments were recorded as expressing the majority opinion of the representatives of the industry present:

SLACK FILLED PACKAGES

It was declared to be the unanimous sense of those of the industry at the meeting that the slack filled package constitutes an unfair method of competition, is wasteful, is an unfair trade practice, and is harmful to the public.

It was generally agreed that "slack filled" may be applied to the package with cubic contents for the bulkiest product is so great as to enable it to contain from 1½ to 2 ounces more, net weight, than is actually placed in it.

SUBSIDIZING JOBBERS' SALESMEN

It was the sense of the meeting, as expressed, that the subsidizing of jobbers' salesmen by the giving of commissions and bonuses, premiums or in any way, is an unfair trade practice, is an unfair method of competition, and is contrary to the public interest.

All representatives of the industry present voted affirmatively except one who voted in the negative.

MINIMUM-WEIGHT PACKAGE

It was declared to be the sense of the representatives of the industry that a package of macaroni or spaghetti containing less than 8 ounces was uneconomical, contrary to the public interest, and an instrument of unfair competition and an unfair trade practice.

There was one vote in the negative. All the rest were in the affirmative.

FALSE AND MISLEADING LABELS

It was declared to be the sense of the meeting that false and misleading labels as to the quantity of the product is an unfair trade practice, an instrument of unfair competition, and contrary to the public interest.

The vote was unanimous.

PREMIUMS TO THE TRADE

It was declared that the giving of premiums or so-called free goods to the trade which in any way tends to influence the sale or constitute a reduction in the list price of such seller to all such class of buyers, be declared to be an artificial practice of selling, an unfair method of competition, an unfair trade practice, undesirable merchandising practice, and contrary to the public interest.

The vote was affirmative except for one in the negative.

The exception was suggested that this practice might be justified if the seller is compelled to adopt it in order to meet a similar act in competition. If, however, the judgment of the industry is correct and this is an unfair method of competition, a competitor need not himself adopt it in self-defense but may protect himself against it by invoking the aid of the Federal Trade Commission to prevent his competitor from using it.

In connection with this practice the meeting directed that there be incorporated in the minutes that part of section 2 of the Clayton law which reads as follows:

> SEC. 2. That it shall be unlawful for any person engaged in commerce in the course of such commerce either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof, or the District of Columbia, or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce.
>
> *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for the difference in the cost of selling or transportation, or discrimination in prices in the same or different communities made in good faith and to meet competition.

The representatives of the industry declared that the principles laid down in the law constitute good business principles.

SUBMITTAL TO INDUSTRY

With the foregoing actions, the representatives of the industry requested the commission to summarize what had been done and to furnish a copy to each member of the package-macaroni industry.

It is the understanding that each concern receiving a copy hereof shall be invited to address the commission with any suggestions or criticisms with respect to the decisions of the representatives of the meeting of June 25 and to suggest any further practices which it may think can properly be examined at this time.

It is understood that such comment from the industry shall be in the hands of the commission on or before July 25, 1920, and that thereafter the commission will again address the industry with the results of the referendum.

It is understood that the rights of no one are foreclosed by any action that has been taken. The action amounts to this:

The industry, through its representatives, has discussed certain practices and has advised the commission that in its judgment these practices are unfair trade practices, constitute methods of unfair competition, and are contrary to the public interest.

Any member of the industry who does not agree with this and continues to make use of the condemned practices may be complained against by a competitor. If such application is made to the commission for the issuance of a formal complaint against anyone who continues to use these practices, the commission will treat such application wholly without prejudice and as it considers any other application.

The expression of the industry as here given is advisory to the commission with respect to the issuance of a complaint, but upon a trial of the complaint the respondent will come in entirely without prejudice on the part of the commission and any practice which is challenged will be examined from the beginning.

GUARANTY AGAINST DECLINE

WASHINGTON, D. C., *October 3, 1920.*

The Federal Trade Commission to-day announced that a trade practice submittal on the subject of guaranty against decline in price has been fixed for October 5, 1920, at 11 o'clock a. m., the conference to be held at the commission's offices in Washington. Commissioners Murdock, Thompson, and Pollard will represent the commission.

"Guaranty against decline in price" has been described as the practice of guaranteeing customers against the decline in the price of goods purchased and not resold at the time of any subsequent decline in the prevailing market price of such goods; that is to say, a seller would guarantee to purchasers of his products that in the event the market price of the goods thereafter declined the seller would refund an amount of money equal to the difference between the purchase price of such goods as were undisposed of at the date of price decline and the price to which the goods had declined. There are many variations involving various factors as to time limit of the guaranty; guaranty against own price; against competitor's price; against general market price, and so on.

A "trade practice submittal," it was explained by the commission, was a meeting of a whole industry, or group of industries, in the presence of the commission, to discuss the merits and demerits of business practices which have been generally complained of to the commission, to the end that expert expressions of opinion by the industry as to the fairness or unfairness of various competitive methods be crystalized and recorded. The findings of the meetings being accepted by the commission as the judgment of the trade as to a given practice.

The question of guaranty against decline in price has been the subject of so many complaints lodged with the commission, and opinion seemed so diverse that questionnaires, to the number of 2,000, were therefore sent out inviting, generally, purchasers, manufacturers, merchants (wholesale and retail), and consumers to set out their views, to the end that every party at interest be adequately represented, and that the commission have the benefit of full statements with respect to the various phases of the question.

Hundreds of replies to the questionnaires have been received and carefully digested. The result has been printed in pamphlet form. These replies, which indicate the wide divergence of opinion on the subject, have been arranged by industries and by firms, showing those favoring and those opposing guaranty against decline in price as a commercial practice. Certain noncommittal replies and those favoring the practice with reservations are set out in separate groups. Of the replies, digests of which are printed, about 250 favor the practice and 150 oppose it, while a large number give qualified opinions.

A survey of the questionnaire answers shows that more than 50 separate major lines of industry are represented. These include agricultural implements, automobiles and accessories, canning, cotton and woolen textiles, drugs, groceries, hardware, iron and steel, lumber, machinery and tools, oil and petroleum, paper, plumbing supplies, paints and varnishes, chemicals and dyestuffs, coffees, teas, and spices, electrical supplies, knit goods and hosiery, dry goods, manufactured foodstuffs, shoes and rubber goods, soaps, milling, and the construction industries, etc.

Sufficient preliminary data being in hand and in shape to form the basis of oral discussion, and in response to requests which have come to the commission from time to time to hold hearings, the commission has fixed a date for public hearings and addressed the following letter to interested parties inviting their attendance upon a conference at Washington:

AUGUST 6, 1920.

Under date of December 26, 1919, the Federal Trade Commission sent out a questionnaire asking for a discussion of the question of guaranty against

decline in price which had been the subject of a great many complaints before the commission.

Through the generous cooperation of the various trade associations and of individuals in a wide range of industries, a gratifying volume of responses has been received.

These have been condensed as much as possible while preserving the spirit of the writer in each case. National associations and others have likewise taken referenda of their members. It is not unlikely that a further number of replies, the preparation of which may have been delayed for one cause or another, will be in the commission's hands in time for compilation before the trade practice submittal itself is held by the commission, but it is doubtful whether replies received later than September 1 can be included in a later digest.

The commission has set down October 5, at 11 o'clock a. m., as the time for holding a trade practice submittal on the subject of guaranty against decline, the meeting to be held in the offices of the commission at Washington, D. C.

You are invited to be present in person or by such representative or representatives as you may delegate.

It may be well to explain somewhat in detail the nature of the proceeding which is called a trade practice submittal. When complaints come to the commission alleging unfair methods of competition in commerce, the ordinary proceeding is for the commission to receive such an application for complaint, make a preliminary ex parte examination and, if such preliminary examination seems to establish a prima facie case of unfair practices, to issue a formal written complaint; provided, of course, it is found that the public interest is involved.

It should be understood that a formal complaint issued by the commission is not a judgment by the commission but simply a declaration that a further and formal proceeding is deemed to be in the public interest.

In certain circumstances, as, for example, when an unusually large number of complaints relating to a single industry are received within a short space of time, or when an industry itself seems to be perturbed over practices which are going on and which, if eliminated, would leave the industry more free to discharge its duty of service to the public, or when (as in this instance) a practice complained of is general in several industries, a trade practice submittal may be used by the commission as a more speedy means toward solution.

This trade practice submittal consists of an invitation, which is in no sense a summons, for a whole industry (or group) to meet together in the presence of the commission and discuss the merits and demerits of practices which have been complained of to the commission and any other practices which may properly be brought to the attention of the meeting.

At the end of the discussion, each of the practices which have been examined are taken up separately, and are submitted for an expression of opinions as to their fairness or unfairness. The commission does not participate in the meeting except to ask questions which will tend to bring the whole matter clearly into the record.

If the practically unanimous opinion of the representatives of the business world condemns a given practice, the commission receives that expression of the industry as being founded on expert knowledge and business experience with respect to the condemned practices, and likewise the sanctioning of a practice by the industry, even though the propriety of that practice has been questioned by application for the issuance of a complaint, is similarly regarded as being the expression of industry based upon experience and business judgment.

Such a practically unanimous expression on the part of a representative body of an industry is given great weight by the commission in considering such practices. It should be understood that it represents no decision or judgment on the part of the commission and is in no sense binding upon anyone not present at the meeting. Nor, indeed, is it binding upon anyone who is present at the meeting but who dissents from the majority opinion. The effect is that the weight of opinion of the industry has been communicated to the commission and that thereafter the commission will feel it to be its duty in case complaints are made to it of a continuance of the condemned practices to issue its formal complaint, after inquiry and the public interest determined, in order that by means of a formal and orderly proceeding with an opportunity for subsequent court review, the judgment of the meeting may be subjected to the final test of the courts. Also in case of a division of opinion on any given practice, the commission considers the question to be so much in doubt that it should be left entirely open to be challenged, if anyone desires to challenge it, and made the subject of a more formal proceeding.

To sum up, then, the trade practice submittal amounts to a request on the part of the commission to a given industry or industries that an opinion be given with respect to the fairness or unfairness of any trade practices which have grown up or are growing up, and that this opinion is received by the commission as the best and most authoritative judgment then obtainable, but that this judgment may be challenged by any party in interest and thereafter may be made the subject of a more minute examination in a proceeding around which are thrown all the safeguards of a proceeding in court.

If you have not yet made reply to the questionnaire of December 26 (copy of which is shown on page 6 of the accompanying pamphlet) and will do so by September 1, every effort will be made to digest these belated replies in time for use October 5, at which time you are invited to be represented at the meeting in the commission's office.

By direction of the commission.

Further announcement is made at this time of the completion of a tentative program to be followed at the trade practice submittal on the subject of guaranty against decline in price, to be held before the commission on October 5, 1920, at 10 o'clock a. m., in Washington. The conference will be open to the public.

Indications are that the conference may continue more than one day to permit all interests to be heard. Representatives of consumers, manufacturers, wholesalers, and retailers to a large number have indicated their intention of being present. The following associations will be represented by committees: American National Live Stock Association, Denver, Colo.; American Association of Nurserymen, Princeton, N. J.; Cotton Thread Manufacturers Exchange, Boston, Mass.; Eastern Paperboard Manufacturers Association, Washington, D. C.; Rubber Association of America; Knit Goods Manufacturers Association, Utica, N. Y.; National Association of Cotton Manufacturers, Boston, Mass.; New York City; Southern Supply and Machinery Dealers Association, Richmond, Va.; Toy Manufacturers of United States of America, New York City; Manufacturers Council of the State of New Jersey; Silk Association of America, New York City; Steel Barrel Manufac-

turers Association, Cleveland, Ohio; Mid West Rubber Manufacturers Association, Chicago, Ill.; National Association of Purchasing Agents, New York City; National Association of Retail Grocers of United States, San Francisco, Calif.; National Association of Clothiers, New York City; National Association of Window Glass Manufacturers, Pittsburgh, Pa.; National Bottle Manufacturers Association of United States and Canada, New York City; Optical Manufacturers Association, Providence, R. I.; Prepared Roofing Association, Chicago, Ill.

KNIT-GOODS MANUFACTURERS

WASHINGTON, D. C., *October 20, 1920.*

Knit-goods manufacturers were invited to attend a trade practice submittal in the offices of the Federal Trade Commission, Twentieth and D Streets NW., Washington, D. C., Wednesday, October 20, 1920, at 10 o'clock a. m. Commissioners Murdock and Pollard represented the commission and were assisted by Attorney W. E. Clark.

This commission, charged under the law with the duty of preventing unfair methods of competition in commerce, wishes to confer with the members of your industry with a view, first, of considering a plan by which there may be a general elimination of such methods of competition as are admittedly unfair as promptly and with as little inconvenience to the trade as possible; and, second, to get the views of the members of the industry concerning the practical operation of certain methods concerning which we desire further information. Some of the methods which have been complained of are: Misbranding in many forms; weighting of silk; false advertising; price maintenance; guaranty against decline in price.

Your trade associations have expressed their approval of the calling of this conference and their sympathy with its objects, and will have representatives present. The discussion will be informal, and all will be invited to take part.

The commission is particularly desirous to reduce to the minimum any apparent injustice which may flow from the impracticability of proceeding simultaneously against all engaged in a practice which it has condemned.

The conference is not for the purpose of gathering evidence upon which to base complaints. The commission is not authorized by law to punish unfair methods. It is simply charged with the duty of preventing such methods, and in the performance of this duty it confidently counts on your assistance. If you can not be present, we shall be glad to have any views that you may desire to express sent us by letter in the inclosed franked envelope, upon which no postage is required.

OIL INDUSTRY [4]

WASHINGTON, D. C., *December 10, 1920.*

To the Federal Trade Commission:

I am herewith submitting copies of resolutions adopted at two trade practice submittals at which I presided in pursuance of direction of this commission, to wit:

1. Conference at Chicago, June 22, 1920, of members of the oil industry operating in the States of Indiana, Illinois, Michigan, Wisconsin, Minnesota, Missouri, Iowa, North Dakota, South Dakota, northern Oklahoma, and Kansas.

2. Conference at Denver, August 19, 1920, of members of the oil industry operating in the States of Colorado, Montana, Idaho, Utah, and New Mexico.

I explained at each conference that these resolutions were in no way binding on the commission, but that the commission would be glad to receive and file the same for reference in connection with complaints which might be filed with it.

I move that these resolutions be filed.

Respectfully submitted.

JNO. GARLAND POLLARD, *Commissioner.*

RULES GOVERNING FEDERAL TRADE PRACTICE SUBMITTAL

Adopted at Chicago conference August 19, 1920, covering the States of Colorado, Montana, Wyoming, Idaho, Utah, and New Mexico, together with contract forms and modifications recommended by conference committee

1. *Discrediting competitors.*—Too much effort is oftentimes made by marketers in running down or discrediting competitors. There is no objection to making fair and reasonable tests of a competitor's products with those offered by others, with the view of showing the relative value of oils offered to do the work desired by the buyer, but false representations as to the actual value of a competitor's product or various other subterfuges certainly reflect no credit even when an order is obtained, and we agree to avoid this practice, because we consider it unfair.

2. *Slanderous attacks on competitors.*—Attacking a competitor as to his financial standing or personal integrity or his ability to serve the trade is particularly reprehensible, and even though certain suspicions may be well founded, the advantages obtained from practices of this kind react ultimately to the discredit of those making such claims, and this policy we agree to avoid, because of its being unfair.

3. *Condemnation of competitors.*—Condemning a competitor because of the size of his business is not legitimate, whether he be large or small. A small distributer may sometimes have an advantage over a large one, and yet in many cases the reverse is true. More important in this connection are the

[4] Among cases involving practices condemned by the industry in which the commission issued orders to cease and desist are the following:
Carbon Oil Co. (Ohio), Docket No. 693.
Consolidated Oil Co. et al., Docket No. 706.

methods employed and the character of those at the head of the business who dictate the policy. We agree not to indulge in unethical practices of this kind, because we believe it to be an unfair method of competition.

4. *Advertising.*—Advertising should be at all times fair and honest. It is not discreditable to become enthusiastic in print about the goods you offer for sale, but to imply that your neighbor is not selling good products or to criticize him directly or indirectly is bad enough when practiced by salesmen, but infinitely more serious is it when a paid advertisement conveys even your own apprehension (which may be well founded) to the general reading public as to your opinions of your competitor or of his wares, and it should not be permitted, because we consider it an unfair method of competition.

5. *Sales on quality basis.*—What we strictly desire to encourage is the sale of products on the basis of quality and intrinsic value. Salesmen should be encouraged to explain diligently and carefully the merits of their particular line and a fair and reasonable profit over and above the cost of the material itself, the distribution cost, and a reasonable amount for overhead and profit is to be heartily commended.

6. *Misbranding.*—We agree to avoid misrepresentation and misbranding any petroleum product, and that the brands shall in all cases truthfully set forth the grade and quality of goods offered for sale. We consider misbranding an unfair method of competition.

7. *Service and filling stations.*—A service station is defined as a drive-in place where the business conducted is chiefly the dispensing of gasoline and other petroleum products, having no connection with the display, sale, or repair of automobiles, or the inclosed storage thereof.

A filling station is defined as a place other than a service station, where gasoline and other petroleum products are sold to the public.

There is no objection to the installation of service stations for the sale of petroleum products when said stations are owned and operated legitimately by responsible marketers. Neither is there objection to the installation of curb pumps, tanks, and equipment, owned and operated in the same manner.

8. *Curb pumps and tanks.*—It is the sense of the conference that curb pumps and tanks should not be leased or loaned by marketers or distributers.

9. *Sale of curb pumps and tanks.*—It is the sense of the conference that pumps, tanks, barrels, and other equipment should not be leased or loaned by marketers to retail distributers.

And, furthermore, that marketers should not rent from a dealer or consumer equipment of any kind for the sale of their products, which, in our opinion, has a tendency to stifle legitimate competition.

10. *Invoicing and delivering.*—It is the sense of this conference that the invoicing of goods to one point and delivered to another point where the cost is higher is not considered a clean and straightforward method of marketing, and this conference goes on record as opposing this practice, because it is unfair competition.

11. *Cash discounts.*—It is the sense of this conference that all tank-wagon, service-station, and filling-station sales be for cash at time of delivery, or as nearly as it is practicable, and any practice that tends to make such sales on a credit basis is deplored and condemned.

12. *Secret rebates and settlements.*—We discourage and abhor all forms of secret rebates and settlements whereby books and accounts can be so manipulated as to cover up the actual conditions. For instance, we strongly condemn refunding of any amount to the purchaser unless it is clearly shown for what reason the refund is made and that it is legitimate, and charging funds returned to accounts other than the proper ones we consider unfair and unwise

and it is prohibited. We agree that we shall not pursue the aforesaid prohibited practices by reason of their being an unfair method of competition.

13. *Commercial bribery.*—We condemn most severely the payment of money or anything of value for any service performed or to be performed in order to influence a sale. The practice of invoicing a less quantity than the actual amount is prohibited. We also agree not to pay more than the market price for empty barrels in the control and under the supervision of engineers or superintendents of plants. Barrels, when returned, should be credited to the accounts of the individaul or concern by whom they are owned, and cash payments or credit memorandum sent to such individual or concern, which indicates to the parties interested that they have received full market price for the returned empties. No subterfuge is allowable under this rule, which we agree to respect.

14. *Unfair contracts.*—We object to and will not indulge in the making of contracts with the ultimate consumers or users of oils, gas oils, distillates, kerosene, naphtha, or gasoline at a fixed price guaranteeing against an advance and protecting in case of decline. There is no objection, however, to basing contracts on a market decline or advance, but it should have the merit of working between the different branches of the producing, manufacturing, and marketing ends of the petroleum industry, nor does it apply to the making of contracts with the ultimate consumer, or users of lubricating oils and specialty goods.

The foregoing code covering trade practices in the petroleum industry is the result of a careful study of all phases of marketing and offered as suggestions that will establish uniformity in the marketing of petroleum products and the elimination of undesirable practices. The larger companies in the industry are disposed to follow this code just as long as it is lived up to by all marketers; consequently to maintain fair practices it is necessary that all marketers adhere to the rules set forth and give their cooperation in the enforcement of same. The Federal Trade Commission looks with favor upon this trade practice submittal.

RULES GOVERNING FEDERAL TRADE PRACTICE SUBMITTAL

Adopted at Chicago conference June 22, 1920, covering the States of Indiana, Illinois, Michigan, Wisconsin, Minnesota, Missouri, Iowa, North Dakota, South Dakota, northern Oklahoma, and Kansas, together with contract forms and modifications recommended by conference committee.

1. **Discrediting competitors.*—Too much effort is oftentimes made by marketers in running down or discrediting competitors. There is no objection to making fair and reasonable tests of a competitor's products with those offered by others, with the view of showing the relative value of oils offered to do the work desired by the buyer, but false representations as to the actual value of a competitor's products or various other subterfuges certainly reflect no credit even when an order is obtained, and we agree to avoid this practice.

2. **Slanderous attacks on competitors.*—Attacking a competitor as to his financial standing or personal integrity or his ability to serve the trade is particularly reprehensible, and even though certain suspicions may be well founded, the result obtained from practices of this kind react ultimately to the discredit of those making such claims, and this policy we agree to avoid.

3. *Condemnation of competitors.*—Condemning a competitor because of the size of his business is not legitimate, whether he be large or small. A small

* Revised and amended by conference committee.

distributer may sometimes have an advantage over a large one, and yet in many cases the reverse is true. More important in this connection are the methods employed and the character of those at the head of the business who dictate its policy. We agree not to indulge in unethical practices of this kind.

4. *Advertising.*—Advertising should be at all times fair and honest. It is not discreditable to become enthusiastic in print about the goods you offer for sale, but to imply that your neighbor is not selling good products or to criticize him directly or indirectly is bad enough when practiced by salesmen but infinitely more serious is it when a paid advertisement conveys even your own apprehension (which may be well founded) to the general reading public as to your opinions of your competitor or of his wares and it should not be permitted.

5. *Sales on quality basis.*—What we strictly desire to encourage is the sale of products on the basis of quality and intrinsic value. Salesmen should be encouraged to explain diligently and carefully the merits of their particular line and a fair and reasonable profit over and above the cost of the material itself, the distribution cost and a reasonable amount for overhead and profit is to be heartily commended.

6. **Misbranding.*—We agree to avoid misrepresentation and misbranding any petroleum product, and that the brands shall in all cases truthfully set forth the grade and quality of goods offered for sale.

7. **Service and filling stations.*—A service station is defined as a drive-in place where the business conducted is chiefly the dispensing of gasoline and other petroleum products, having no connection with the display, sale, or repair of automobiles, or the inclosed storage thereof.

A filling station is defined as a place other than a service station, where gasoline and other petroleum products are sold to the public.

There is no objection to the installation of service stations for the sale of petroleum products when said stations are owned and operated legitimately by responsible marketers. Neither is there objection to the installation of curb pumps, tanks, and equipment owned and operated in the same manner.

8. **Commission agency agreements.*—A commission agency agreement is defined as the leasing of pump, tanks, and equipment, owned by others, with the understanding that the owners or their employees will make sales of gasoline and other petroleum products from such equipment at prices established by the lessee and as agent of the lessee. There is no objection to responsible marketers making commission agency agreements, but the total commission allowed shall not exceed the difference between the tank-wagon and service-station prices, and shall be in lieu of all other compensation, including the use of pumps, tanks, and equipment, ground upon which located, etc. The form of commission agency agreement recommended is as follows:

This agreement, made this —— day of ———, 19—, by and between ——— of ———, party of the first part, and ———, an ——— corporation, party of the second part, witnesseth:

1. That the party of the first part hereby demises and leases to the party of the second part the privilege of ———, using, and operating ——— gallon tank and ——— pump, and appliances connected therewith ———, located at ———, the premises occupied by the first party, situated at ——— and known as ———, for the term of ——— from the ——— day of ———, 19—.

2. It is understood that any and all buildings or equipment heretofore or hereafter constructed or placed by the second party upon the above-described

* Revised and amended by conference committee.

premises are the property of the second party and may be removed by it within 30 days after the termination of this agreement.

3. It is understood that the said premises are to be used as a service station for the sale of ——— gasoline, and the second party agrees to keep on hand at said station such supply of said gasoline, unavoidable delay and accident excepted as the business may require.

4. It is further mutually agreed that the first party shall use his best efforts and endeavors to sell the goods so contemplated to be handled and sold at said station.

5. As rent for said privilege and as compensation for the sale of said gasoline the second party agrees to pay the first party for each month of the term hereby demised an amount equal to 1 cent per gallon for all gasoline sold at said station, the sum due for each month to be paid to the first party on or before the 10th day of the following month.

6. The first party further agrees that he will keep a just and accurate account of all sales made and render a statement thereof to the second party at the end of each day's business, together with a remittance of all moneys collected or received on account thereof.

7. The first party agrees to sell at said station such gasoline as may be furnished for sale by the party of the second part, and to sell the same for such prices only as shall be fixed and designated therefor, from time to time, by the party of the second part, and it is understood and agreed that all gasoline delivered by said second party to said first party hereunder shall remain the property of said second party until the same has been sold hereunder.

8. Should the second party fail to pay the sums above mentioned as rental and as compensation to the first party within the time specified, then this agreement may, at the option of the first party, upon 10 days' written notice thereof, deposited in the United States mail, directed to the second party, at its office in ———, be terminated, and if the first party fails to use his best endeavors in and about the sale of said goods, in a manner satisfactory to it, then this agreement may, at the option of the second party, upon written notice to the first party, deposited in the United States mail, addressed to the said premises, be terminated. This agreement may be canceled by either party giving 30 days' notice in writing.

9. If the first party is not the owner in fee of the premises above described, then this agreement shall not become effective until the consent of the owner of said premises to this agreement is noted hereon in writing, together with the consent and agreement of each owner that any buildings or equipment placed thereon by the second party may be removed as hereinbefore provided.

10. In case of the death, inability, or refusal of the said first party so to handle and conduct said business at said premises according to the terms hereof, then the second party may continue to conduct said business and the expense thereof shall be charged against the sums so to be received on account of sales as hereinbefore provided, or at the option of the second party, at any time after the happening of such death, inability, or refusal, this agreement may be terminated.

In witness whereof the said parties have caused this instrument to be executed by their proper representatives thereunto duly authorized this day and year first above written.

——— ——— [SEAL.]

The undersigned owner of the premises described in the foregoing agreement hereby consents to the making of said agreement by the first party and agrees

that said ——— company may remove any buildings or equipment which have been, or may be placed by it upon said premises as provided in said agreement.

In witness whereof the owner has hereunto set his hand and seal at the time of the making of such agreement.

——— ——— [SEAL.]

9. *Curb pumps and tanks.*—It is the sense of the conference that pumps and tanks should not be leased by marketers to retail distributers. If the practice is indulged in, the following conditions should govern:

Pumps, tanks, and equipment for storing and handling petroleum products in furtherance of the sale thereof, when leased to retail distributers, must be at a rental which yields a reasonable profit on cost of same.

The minimum annual rental shall not be less than 10 per cent of the selling price of said pump, tank, and equipment, in which is included a reasonable allowance for depreciation. The said selling price shall appear in each tank rental agreement. The sum of money specified in the lease for rental of such equipment must actually be collected monthly by the lessor.

The form of lease recommended is as follows:

TANK RENTAL AGREEMENT

This agreement, made at ——— this —— day of ———, A. D. 19 —, between the ———, a corporation of the State of ——— party of the first part, and ———, of ——— part— of the second part, witnesseth as follows:

Whereas the said part— of the second part is now purchasing petroleum products from the said party of the first part and ——— requested the said party of the first part to rent to ——— a tank and pump for the storage and distribution thereof; and

Whereas the said party of the first part has consented to rent such tank and pump to said part— of the second part for ——— convenience and use in ——— business upon the terms and conditions hereinafter mentioned.

Now, therefore, in consideration of the above and of the rental of ——— dollars per month, which the part— of the second part agrees to pay to the party of the first part in advance on the first day of each month during the continuance of this agreement as rental for the said tank and pump, said party of the first part does hereby agree to furnish and rent to the said part— of the second part a tank of the capacity of about ——— gallons, more or less, and a pump for said tank to be used by the part— of the second part.

It is expressly understood and agreed that said tank and pump and all the appliances connected therewith or used in connection with the same furnished by the said first party shall at all times, except as hereinafter provided, be and remain the property of the said party of the first part, and shall be used by the said part— of the second part only for the purpose of storing and distributing petroleum products, and if used for any other purpose than that herein specified, than said party of the first part shall have the right to declare this agreement null and void and said party of the first part is hereby given the privilege and right without notice to said part— of the second part, to enter upon the premises whereon said tank and pump are located with men, horses, wagons and such equipment as may be necessary, and remove therefrom said tank, pump, and appliances furnished by said first party without recourse to any legal proceedings for that purpose; provided, however, that part— of the second part shall have the privilege of purchasing said pump, tank, and appliances at any time for the sum of ——— dollars, payable in cash, which it is hereby mutually agreed is the reasonable value of said tank, pump, and appliances.

It is further agreed between the parties hereto that they or either of them shall have the privilege of terminating this agreement at any time upon giving 30 days' notice in writing to the other, provided, however, that in the event that this agreement shall be terminated by the part— of the second part by notice aforesaid at any time within six months from the date hereof, said part— of the second part shall refund to said party of the first part the cost of installing said tank, pump, and appliances unless said part— of the second part shall purchase same in manner and at the price hereinbefore provided, and upon cancellation and failure of said second party to purchase said equipment as herein provided, then said first party shall have the right and privilege of removing said equipment as above set forth.

And in further consideration of the premises said part— of the second part, for ——— heirs, executors, administrators, and assigns, hereby agree— to indemnify and save harmless the said party of the first part of and from any and all claims for liability for any and all loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of or from said tank and pump, or the appliances connected or used therewith, or through any imperfection in the construction, installation, or operation of the same, whether due to negligence of the party of the first part or otherwise.

And also, for ——— heirs, executors, administrators, and assigns, do— hereby expressly waive, relinquish, exonerate, discharge, and protect the said party of the first part from any and all liability for damages which may be suffered by ——— or ——— neighbors by reason of any leakage, fire, explosion, or other casualty occurring through any imperfection in said tank and pump or the appliances connected therewith or from any other cause whatsoever.

Witnesses:

——— ———.

——— ———.

[SEAL.] By ——— ———,

———.

The undersigned, owner ——— of the premises upon which the above-described tank ——— is to be or has been installed, hereby consent— to the installation thereof and agree— to be bound by the terms and conditions of the foregoing agreement.

———. ———. [SEAL.]

Any other form of lease that may be used shall not contain any provision restricting the lessee to the partial or exclusive handling or storing of the petroleum products of the lessor.

The leasing to or sale to customers of curb pumps, tanks, and equipment for a nominal consideration, or without consideration, with or without a restricting agreement as to the products to be dispensed through such appliances, is prohibited. Such contracts now in force must be canceled not later than one year from October 1, 1920.

Pumps, tanks, and equipment owned by retail distributers shall not be leased from them at a fixed rental either with or without commission by those engaged in the wholesale oil business; viz, those making delivery by tank cars, tank wagon, or in barrels. This does not prevent the rental of drive-in service stations, pumps, tanks, and equipment in connection therewith, where same is to be operated by salaried employees of a marketer as a service station as defined in Rule 7.

10. * *Sale of curb pumps, tanks, and barrels.*—Where curb pumps, tanks, and metal barrels or other appliances for the distribution of petroleum products are sold by those engaged in the oil business, the price shall be the same as offered to the trade by the manufacturer, and in no case shall the terms of payment be extended longer than 12 months from date of delivery of said equipment. It is understood that the sale of the above equipment shall not be conditional upon the sale of petroleum products.

11. * *Cash discount.*—The sale of products from service stations, filling stations, and tank wagons shall be based on net prices without a cash discount of any kind. This applies to coupon books or any similar method of marketing.

12. It is the sense of this conference that all tank-wagon, service-station, and filling-station sales be for cash at time of delivery, or as nearly as it is practicable, and any practice that tends to make such sales on a credit basis is deplored and condemned.

13. * *Secret rebates and settlements.*—We discourage and abhor all forms of secret rebates or settlements whereby books and accounts can be so manipulated as to cover up the actual conditions. For instance, we strongly condemn refunding of any amount to the purchaser unless it is clearly shown for what reason the refund is made and that it is legitimate, and charging funds returned to accounts other than the proper ones we consider unfair and unwise and it is prohibited. We agree that we shall not pursue the aforesaid prohibited practices.

14. * We condemn most severely the payment of money or anything of value for any service performed or to be performed in order to influence a sale. The practice of invoicing a less quantity than the actual amount is prohibited. We also agree not to pay more than the market price for empty barrels in the control and under the supervision of engineers or superintendents of plants. Barrels, when returned, should be credited to the accounts of the individual or concern by whom they are owned, and cash payments or credit memorandum sent to such individual or concern, which indicates to the parties interested that they have received full market price for the returned empties. No subterfuge is allowable under this rule, which we agree to respect.

15. * *Unfair contracts.*—We object to and will not indulge in the making of contracts with the ultimate consumers or users of fuel oils, gas oils, distillates, kerosene, naptha, or gasoline at a fixed price guaranteeing against an advance and protecting in case of a decline. There is no objection, however, to basing contracts on a market decline or advance, but it should have the merit of working both ways. The above does not apply to contracts on above products between the different branches of the producing, manufacturing, and marketing ends of the petroleum industry, nor does it apply to the making of contracts with the ultimate consumer or users of lubricating oils and specialty goods.

The foregoing code covering trade practices in the petroleum industry is the result of a careful study of all phases of marketing and offered as suggestions that will establish uniformity in the marketing of petroleum products and the elimination of undesirable practices. The larger companies in the industry are disposed to follow this code just as long as it is lived up to by all marketers; consequently to maintain fair practices it is necessary that all marketers

* Revised and amended by conference committee.

adhere to the rules set forth and give their cooperation in the enforcement of same. The Federal Trade Commission look with favor upon this trade practice submittal.

SHEFFIELD SILVER-PLATED HOLLOW WARE [5]

WASHINGTON, D. C., *January 19, 1922.*

At the request of certain manufacturers of silver-plated hollow ware, representing approximately 50 per cent of the industry, a trade practice submittal was held with the Federal Trade Commission to consider the use of the word "Sheffield" as a descriptive trade name for silver-plated hollow ware. Previous notice had been given to practically every manufacturer of this ware in the United States, and either in person or by written communication the expression of views was fairly representative of the industry. Commissioner Gaskill was assigned to conduct the submittal.

The consensus of opinion was that the trade and the purchasing public were injuriously affected by the indiscriminate use of the term as now being applied. One element in the trade contended for the elimination of the name entirely. The remainder asserted that there was no deceptive quality in the name itself but that it was necessary to establish a standard or definition of quality to which the term should properly apply.

The purpose of the meeting and the powers of the commission were duly explained and the conference thereupon passed into the hands of the meeting. The pertinent facts which were developed may be summarized as follows:

Silver-plated ware was originated in England in 1742. The process consisted of welding silver plates on both sides of a sheet or bar of copper forming one thoroughly united mass which was then rolled out and worked into the desired form. The ware produced by this process was properly known as "copper rolled plate," although the name was not used as a trade-mark or designation in the trade. The English method of identification consists of the use of registered hall marks, and though Sheffield was the popular term for such ware, because it reached its highest development by the silversmiths of

[5] Among cases involving practices condemned by the industry in which the commission issued orders to cease and desist are the following:
Henkel-Clauss Co., Docket No. 802.
Sheffield Razor Co., Docket No. 803.
Joseph S. Weinstock, Docket No. 1094.
Western Silver Works (Inc.), Docket No. 1155.
Abraham Ash Co., Docket No. 1161.
Louis Batlin, Docket No. 1200.

Sheffield, it was identified by these hall marks. The name "Sheffield" was not marked upon the ware. This proc ss first made silver-plated ware available as a substitute for solid silverware, and naturally came into a very general use.

About 1840 the invention of the process of electroplating, which consists of the depositing of silver by means of an electric current upon a base metal which will conduct electricity, entirely displaced the Sheffield method becaus› of its very much lowered cost. The so-called Sheffield ware in the course of time went out of production, and now is sold only in antique shops to special collectors at prices which clearly indicate the difference between the original Sheffield ware and electroplated ware.

It was sufficiently established in the course of the discussion that the original Sheffield ware is not in actual competition with electroplated ware and there is no real probability that any purchaser who int nds to buy original Sheffield ware will be deceived into accepting modern electroplated ware as an unrecognized substitute for antique Sheffield ware by the use of the word "Sheffield" in connection with the sale of electroplated ware. Original or real Sheffield ware is generally sought for by collectors and specialists who are usually instructed in the difference between the two wares.

The real difficulty is that the word "Sheffield" as now used in the industry has no real meaning but is indiscriminately applied by manufacturers to all grades of silver-plated ware from stamped steel with a thin silver coating up to the heaviest plating on nickel-silver base. It appears that some manufacturers use two firm names, under one of which high-grade ware is produced and under the other name an inferior grade is sold, but both are marked "Sheffield." Manufacturers of inferior ware mark it "Sheffield" at the request of the buyer.

At the same time it is conceded that the word "Sheffield" as applied to silver-plated hollow ware does have a general and well-accepted meaning to the purchasing public and that the use of the name makes salable, or more readily salable, ware which without such marking would sell slowly or not at all. It seems clear that to the purchasing public the term is indicative of origin in Sheffield, England, and signifies quality, not perhaps accurately measured, but a quality of appearance and durability of service corresponding in some degree to the quality which characterized the original Sheffield ware.

It was explained to those who desired the commission to state and enforce a standard definition or meaning that the commission was without power to do this; that it could only look to see whether the

terms actually in use were deceptive to the purchasing public. Suggestion was made, however, that the trade might establish its own definition, which if established in practice might be used as a test of improper marking so far as the trade is concerned.

With the understanding that the commission reserved decision whether the use of the word "Sheffield" was proper, and also whether the adoption of a definition by the trade would dispose of the existing confusion in the public mind, the conference adopted almost unanimously the following definition and pledge:

Resolved, That the word "Sheffield" as a mark for silver-plated hollow ware means quality, and that furthermore quality is defined as meaning an article well plated on a base metal of nickel-silver of not less than 10 per cent nickel content, and that the same may have Britannia metal trimmings or mountings.

The undersigned individually will follow this definition in the marking of silverware and will not either for themselves or at the request of others mark ware which does not conform to this definition with the name "Sheffield."

After consideration of the whole matter the Federal Trade Commission concludes that the adoption of this definition is not dispositive of the issue.

It seems that the uninstructed purchasing public associates the name "Sheffield" with origin in Sheffield, England, and attributes to silver-plated hollow ware sold under that name a representation of quality not accurately measured but corresponding generally to the quality represented in the silver-plated line by original Sheffield plate. But the word as used by the manufacturers has no meaning at all, since it is indiscriminately applied in the trade to all classes and grades of silverware, from the cheapest and poorest to the best and most expensive. Some manufacturers themselves know that the public expects to receive quality silverware under this name, and trade upon this expectation by marketing under different firm or corporate names different grades of silverware, all of which are marked "Sheffield." This absence of meaning in the trade in conjunction with what seems to be an accepted meaning on the part of the purchasing public, known in the trade and relied upon therein, seems to the commission to constitute, in the use of the word "Sheffield" in connection with the sale of silver-plated hollow ware, an unfair method of competition because it tends to deceive and mislead the purchasing public.

Without attempting to express a conclusive judgment upon the merits of any particular case, the Federal Trade Commission in general disapproves the use of the word "Sheffield" as a trade name or mark for silver-plated hollow ware, and will proceed in individual cases as they come before it upon this basis, with due regard to the merits of any particular case.

53471—25——4

GOLD-MOUNTED KNIVES

WASHINGTON, D. C., *May 9, 1922.*

A trade practice submittal on the branding of gold-mounted knives was held before Commissioner Victor Murdock in New York City. Those participating in the meeting were:

L. A. Moreau, Federal Trade Commission attorney.

Fred G. Backus, secretary National Jewelers Board of Trade, New York City.

Charles B. Byron, president Chas. B. Byron Co., New York City.

Edward T. Todd, factory manager Edward Todd & Co., New York City.

Fred A. Pooley, manager export department J. R. Wood & Sons, New York City.

Irving W. Broder, secretary Tomchin & Levinson (Inc.), New York City.

Melville Miller, head of knife department Goldsmith, Stern & Co., New York City.

Mortimer G. Foster, partner Goldsmith, Stern & Co., New York City.

A. L. Woodland, treasurer Kent & Woodland Co., New York City.

Harry C. Larter, partner Larter & Sons, New York City.

J. F. Umpleby, bookkeeper Carter, Gough & Co., New York City.

Abraham Shiman, president Shiman-Miller Manufacturing Co., New York City.

Thomas F. Morgan, supervising inspector Mayor's Bureau of Weights and Measures, New York City.

Julius C. Rauch, president Kollmar, Rauch & Co., Irvington, N. J.

F. J. Krementz, president Frank Krementz Co., Newark, N. J.

John D. Battin, president Battin & Co., Newark, N. J.

J. Koch, president Long & Koch Co. (Inc.), Newark, N. J.

Henry C. Ward, vice president Durand & Co., Newark, N. J.

A. G. Van Houten, representing C. Sydney Smith Co., Providence, R. I.

C. J. Roche, vice president-treasurer the Bassett Jewelry Co., Providence, R. I.

R. E. Walsh, sales manager Ostby & Barton Co., Providence, R. I.

W. N. Dutemple, representative Jewelry & Cutlery Novelty Co., Attleboro, Mass.

Edward I. McConnell, New York representative L. E. Freeman Co., Attleboro, Mass.

George J. Bessinger, owner Geo. J. Bessinger & Co.

Frisch Brothers (sold to Bessinger & Co.).

Edward Todd, president Edward Todd & Co. (Inc.), New York City.

G. H. Niemeyer, president National Jewelers Board of Trade, New York City.

Morris L. Ernst, counsel to National Jewelers Board of Trade, New York City.

W. A. Biglin, investigator, National Jewelers Board of Trade, New York City.

T. Edgar Wilson, editor The Jewelers Circular, New York City.

As a result of the meeting the Trade Commission has issued the following statement:

At the instance of manufacturers of gold-mounted knives, representing a major proportion of those engaged in the industry, an invitation was issued to all manufacturers in this industry to attend a meeting in New York City May 9, 1922, at which it was proposed to submit to the Federal Trade Commission certain trade practices with respect to the marking of knives mounted in gold. The meeting was attended by 24 representatives of the industry. Commissioner Murdock was present, explained the functions of the Federal Trade Commission, and received for transmittal to the commission the following resolution as a submittal of trade practices regarded as desirable by the industry:

1. In our opinion a gold-mounted knife consists of the following: (*a*) A gold sheet or shell; (*b*) the knife movement, or skeleton, consisting of scales, rivets, spring, and blades.

2. All parts, including the bale and the rivets, other than the gold shell or sheet, appearing or purporting to be gold, must be of the karat fineness marked on the gold.

3. A knife stamped with a mark indicating the karat fineness, such as 10K, 14K, or 18K, is improperly marked, if, between the skeleton and the gold sheet, any metal composition is inserted by any method whatsoever, unless that inserted part is of the same karat fineness, to wit, 10K, 14K, or 18K.

4. We agree that all parts which appear to be gold must be of the karat fineness indicated. Furthermore we believe that the consumer has the right to assume that a base-metal sheet or other composition inserted under a gold sheet is gold of the karat mark on the gold if the gold sheet covers the edges of the inserted part.

5. Our decision is to the same effect even if the base-metal sheet is affixed to the skeleton or movement instead of to the gold. A knife made of a gold sheet and a stiffening of base metal may well be a legitimate article of trade, but the mark indicating the karat fineness is improper unless the fineness of the gold and the stiffening or inserted part is up to the karat indicated.

The resolution is intended, first, to define a gold-mounted knife, and, second, to condemn any method in the construction of a gold-mounted knife by which it may be made to appear that more gold of an indicated karat fineness has been used than has been employed in fact.

In the first instance—that is, in the matter of definition—the commission has jurisdiction over brands or marks which may prove,

after challenge, to be deceptive and unlawful. In the second instance—that is, in the matter of construction—if there is to be read into the resolutions an endeavor by the industry to standardize the product by methods of manufacture, it should be said the commission is without jurisdiction to apply its law against departure from such standardization, in the absence of deceptive, misleading, and unlawful markings.

Each of the five paragraphs of which this resolution is comprised was considered separately, was subject to amendment, was debated, and after amendment in some instances was adopted by a viva voce vote, confirmed by telling, the voting showing little division among those participating.

The pertinent facts developed in debate, which resulted in the adoption of the resolution, may be summarized as follows:

Paragraph 1: The definition in this paragraph may be taken as excluding, in the view of the industry, the use of the designation "gold knife" to describe knives that have a gold sheet or shell over the knife scales and as excluding, in view of the industry, the use of the designation "gold-mounted knife" to describe knives made with a shell of gold-filled stock or with an electroplated shell.

Paragraph 2: It is proposed by this expression to convey the opinion of the industry that the use of a solder in attaching a sheet or shell to the knife scales unless of the karat fineness marked on the gold, is a means of deception for the reason that a manufacturer by this practice can make it appear that a greater amount of gold of the quality indicated in the karat mark has been employed than has been used in fact.

Paragraph 3: The purpose of this expression of the industry is to condemn as deceptive the reinforcement of the sheet of gold of indicated fineness by attaching a metal sheet or composition not of the same karat fineness inside the gold sheet. The reason given by the industry for this condemnation is that the amount of gold of indicated fineness is thus made to appear to be greater than the amount that has actually been used.

Paragraph 4: This expression is directed against the practice of inserting between the sheet or shell of gold of indicated fineness and the scales of the knife any base metal or other composition, the edge of which is concealed. This practice is considered deceptive by the industry for the reason that the quality of gold indicated is made to appear to be present in greater quantity than it is in fact.

Paragraph 5: By this expression the industry condemns as unfair, because of deception, the use of a stiffening base metal attached to the skeleton of the knife if the base metal is covered with a sheet of gold definitely indicated to be of a certain karat fineness.

It will be seen that the principal affirmations of the industry are based on the belief that certain methods of construction in gold-mounted knives deceive the public into believing that a greater amount of gold of the fineness indicated has been used by manufacturers employing those methods than is present in the article. It appears that some 90 per cent of the output of gold-mounted knives carry either on the bale or on the side of the knife a mark indicating the quality of gold used, as 10K, 14K, 18K.

While the views of the industry, as submitted, are valuable and informative, and as such will no doubt prove useful in event of consideration of a concrete case by the commission, the commission does not believe them conclusive of the questions raised in all particulars.

Considering the first paragraph of the resolution it appears that the definition of the industry is comprehensive. Obviously a knife and its skeleton covered with a sheet of gold is a gold-mounted, not a gold, knife. It should also be remembered that a knife covered with rolled gold or electroplate gold can not, under the statute, carry the mark of karat fineness without the brand which identifies it as rolled gold or electroplate gold.

The question raised in the second paragraph of the resolution which has to do with the use of a solder presents a matter of some difficulty. The national stamping act limits the manufacturer in the use of solder in articles bearing the karat fineness mark. The tolerance granted in the act is given at one-half of 1 karat of the indicated gold fineness, with an exception. This exception is in the case of watch cases and flat ware where the tolerance granted is three one-thousandths part of the fineness indicated. Provision is made that in case of test for fineness a portion which does not contain any solder or alloy of inferior fineness shall be used, and, further, that the actual fineness of the entire quantity of gold in any article, including all solder and alloy of inferior fineness, shall not be less by more than 1 karat of the fineness indicated. The second paragraph of the resolution, as it reads, disapproves the use of solder of a different karat fineness from that marked on the gold. The resolution stands as it was adopted. However, it appeared by vote that many in the industry are adverse to the use of any solder in a gold-mounted knife. It also appeared that a portion of the industry approves of the use of solder in attaching a sheet or shell to the knife skeleton if the gold fineness of the shell and solder together is not less than the mark indicated. The commission may well wait for further light upon this particular matter in connection with the terms and tolerances of the national stamping act applicable herein. A further difficulty bearing upon alleged deception in this connection is the construction of a knife skeleton by a manufacturer who, by varying the thickness of the flat scales, or by the use of convex

scales, may make it possible for the completed knife, after the gold shell or sheet has been superimposed, to appear to carry more gold of the karat fineness indicated than has been used in fact. In view of the difficulties cited, judgment, so far as an expression on the second paragraph of the resolution is concerned, may well be reserved until the questions arise in an application for the issuance of a complaint under the regular procedure of the commission.

In examining the third paragraph of the resolution, which condemns as deceptive the insertion of inferior composition between the shell and the knife skeleton, it is well to consider whether or not a manufacturer who reinforces the gold shell by soldering a strip of base metal inside the shell is not violating the national stamping act if he indicates the karat fineness of the shell and does not otherwise mark the article, as the act provides that certain forms of gold and a base metal combined shall be specially marked if karat fineness is indicated. If such a practice should prove to be unlawful, it would be, of course, unfair. Under this paragraph, as under paragraph 2, the question again arises as to the accomplishment of the same appearance, alleged here to be deceptive, by the use of a knife skeleton with convex scales or scales of a thickness which may make it appear that more gold of the karat fineness indicated has been used than has been used in fact. As in that instance, so in these, judgment should be reserved on the matter until further testimony is adduced in a proceeding in a concrete case before the commission.

Paragraph 4, which is an expression against the use, as deceptive, of a concealed inferior material under a gold sheet of indicated fineness, such inferior material not being attached to the gold sheet, should be considered in the light of the possibility of inserting a perforated or meshed strip of gold fineness equal to that indicated for the shell, but reduced in weight. The element of alleged deception, as to the thickness of the gold, would still be present. Here also the question of accomplishing the same appearance by the shape and thickness of the knife scales arises and judgment should be reserved on the expression in the paragraph.

Paragraph 5, advancing an expression of the industry that deception where the karat fineness is indicated follows where a base metal sheet is affixed to the skeleton is subject to the same reservations as were applied to the previous paragraphs. As before the knife scales, convex or of a thickness, would seem to accomplish the same deceptive appearance as to the amount of indicated gold which the industry condemns.

The questions which have been here advanced may best be resolved when they arise in connection with concrete cases before the commission, each case to be judged on the law and the facts as they are adduced in the particular case. The trade practice submittal herewith submitted is informative. It is not conclusive.

That is to say, the commission does not accept this declaration as conclusive upon it and may in the event that complaints are made to it by members of the industry, and a concrete case comes before it, receive the declarations of the industry as herein set forth in weighing the question of whether an unfair method of competition has been practiced, or upon new evidence, or further information, add to, or take away from, the definitions herein set forth by the industry.

Completeness of disclosure in representation, labels and markings, in any commodity, so far as it is practicable, seems desirable to the industry and the public. Unless the nature of the article clearly forbids, complete disclosure in articles made in part or in whole of gold, would appear to involve not only a revelation of the karat fineness of the gold employed but the pennyweight as well, quantity as well as quality being designated, while gold-filled and gold-rolled stock, to meet the requirements of complete disclosure would be marked as such with the karat fineness added and the proportion of gold to base metal indicated, due tolerance for mechanical and decorative purposes being granted. In the same way when base metal upon which gold has been deposited by electrolysis or by fire gilting is used the fact could be indicated.

GOLD-FILLED WATCHCASE INDUSTRY

WASHINGTON, D. C., *January 18, 1923.*

The Federal Trade Commission to-day released the following statement respecting a trade practice submittal held before Chairman Murdock, assisted by Chief Examiner Millard F. Hudson, by manufacturers of gold-filled and gold-plated watchcases, Commissioner Nugent dissenting in a memorandum:

At the request of a number of manufacturers of gold-filled and gold-plated watchcases, representing approximately 75 per cent of the industry, a trade practice submittal was held with the Federal Trade Commission on January 18, 1923, for the purpose of giving those engaged in the industry an opportunity to express their views in relation to the alleged unfairness of prevailing methods of branding their products, with long-time guaranties and otherwise, and to practicable methods of correcting any evils found to exist. The gathering was attended by all the principal manufacturers and was fairly representative of the industry. Commissioner Murdock conducted the submittal on behalf of the commission.

The purpose of the meeting and the powers of the commission were duly explained, and the representatives of the industry then organized by electing a chairman and secretary and the discussion

proceeded. The facts which were developed are summarized in the following preamble and resolutions, which were unanimously adopted and subscribed to by all present:

Whereas there now exists and for years past has existed among manufacturers and dealers in gold-filled and gold-plated watch cases throughout the United States the practice of guaranteeing such gold-filled and gold-plated watchcases to last or wear for a specified length of time, in most cases such guaranteeing being for a period of 20 and 25 years; and

Whereas this practice has become so widespread that any manufacturer or maker desiring to compete in the markets of the United States has been and is compelled as a matter of self-protection to adopt and continue the practice; and

Whereas the public has been defrauded and deceived because unscrupulous manufacturers and dealers have placed upon watchcases of an inferior quality or watchcases made of brass with a thin plating of gold long-time guaranties, and it being impossible for anyone to tell, without destroying the case, the amount of gold contained in the case, and it clearly appearing that said practice is not only detrimental to the purchasing public but has resulted in unfair methods of competition in interstate commerce among manufacturers and dealers:

Now, therefore, we, the undersigned manufacturers of not less than 75 per cent of all of the gold-filled or gold-plated watchcases manufactured in the United States, in open meeting condemn the practice of guaranteeing gold-filled or gold-plated watchcases to last or wear for specified lengths of time, and we hereby petition the Federal Trade Commission to bring its action against any person, firm, corporation, or association, being a manufacturer of or wholesaler or retail dealer in watchcases, made in whole or in part of an inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto platings, coverings, or sheets composed of gold or of an alloy thereof and which watchcases are known in the market as gold-filled, rolled gold plate, gold plate, gold electroplate, or by any similar designation or against any officer, manager, director, or agent of such firm, corporation, or association who imports into or causes to be imported into the United States for the purpose of selling or disposing of the same, or deposits or causes to be deposited in the United States mails for transmission thereby or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States or the District of Columbia in any other State, Territory, or possession of the United States, or to said District, in interstate commerce or to transport or cause to be transported from one State, Territory, or possession of the United States or to said District in interstate commerce, except any such cases wherein the destination marked upon the package containing same is some foreign country not a possession of or a dependency of the United States outside of the United States any watchcase manufactured after the date when the order takes effect and have stamped, printed, engraved, or imprinted thereon or therein, or upon any tag, card, or label attached or applied thereto, or inclosed therewith or upon any box, package, cover, or wrapper to which such watchcase is incased or inclosed, the word "Guaranteed" or the word "Warranted," with or without other words or marks indicating the time or duration of wear, or any mark or marks designed or intended to indicate the length of time that such watchcases or the plate, covering, or sheet of gold or of its alloy in or on such watchcase will last or wear, or any word or words, mark or marks, indicating or importing or designed or intended to import time or duration; that every

manufacturer and dealer as hereinbefore described shall mark conspicuously and indelibly on the inner surface of one of the lids or caps of any such watchcase the registered name or properly registered trade-mark of the maker or manufacturer thereof, and that when any such watchcases are stamped, branded, engraved, or imprinted with the words "gold filled," or words indicating that such watch cases are gold filled, such words shall be accompanied, in close proximity thereto, by some words or marks usually employed to indicate the fineness of gold, which words or marks shall be legibly stamped, branded, engraved, or imprinted upon such watchcase, in characters of the same size as those employed in said words "gold filled"; and the actual fineness of each and every portion of the sheets of gold or of its alloy which are soldered, brazed, or otherwise affixed to the inferior metal in such watchcases shall not be less by more than three one-thousandths part than the fineness indicated by the words or marks of fineness so stamped, branded, engraved, or imprinted upon such watchcases; provided, further, that when any such watchcases are stamped, branded, engraved, or imprinted with the words "Gold filled," or words indicating that such watchcases are gold filled, they shall be constructed in accordance with the following specifications: The backs and caps of such cases shall be made of two sheets of gold or of any alloy thereof, soldered, brazed, or otherwise affixed respectively to the inner and outer surfaces of the sheet of inferior metal; the center, bezel, pendant, crown, and bow shall be made of one sheet of gold or of an alloy thereof, soldered, brazed, or otherwise affixed to the outer surface of the sheet of inferior metal; the sheet of gold or of its alloy affixed to the outer surface of the backs, center, open face bezel, pendant, crown, and bow shall not be less than three one-thousandths of one inch in thickness; the sheets of gold or of its alloy affixed to the inner surfaces of the backs, to the inner and outer surfaces of the caps, and to the outer surface of the hunting bezel, shall not be less than one one-thousandth of an inch in thickness. Whenever the thickness of the sheets of gold or of its alloy is stamped, branded, engraved or imprinted in such watch cases, such mark shall only refer to the thickness of the sheets of gold or of its alloy so affixed to the outer surfaces of the backs, center, open face, bezel, pendant, crown, and bow, and in no instance shall the thickness of the gold or of its alloy in any of the parts so mentioned be less than the thickness indicated by the mark stamped, branded, engraved, or imprinted in such case. The mark indicating such thickness shall be expressed in decimals indicating thousandths of an inch; provided, that in any test for the ascertainment of the thickness of such sheets of gold or of an alloy thereof, the part or parts to be measured shall be those where no gold has been added to or deducted from the thickness by any process designed or intended for the purpose of decoration or ornamentation.

DUEBER-HAMPDEN WATCH CO.,
A. M. DUEBER, *President.*
EMERSON WATCH CASE CO. (INC.),
By SAUL SMIGROD, *President.*
JOSEPH FAHYS CO.,
GEORGE E. FAHYS, *President.*
THE KEYSTONE WATCH CASE CO.,
By JOHN G. MUELLER, *Secretary.*
SOLIDARITY WATCH CASE CO.,
JOHN W. SHERWOOD, *President,*
WADSWORTH WATCH CASE CO.,
H. M. STEGEMAN, *Treasurer.*

After consideration of the whole matter, it is concluded:

I. That the Federal Trade Commission has reason to believe from the facts submitted to it by the manufacturers, subject to further inquiry in proceedings as provided by section 5 of the Federal Trade Commission act:

(*a*) That the practice of placing time guaranties on gold-filled and gold-plated watches, for distribution and sale in interstate commerce, has led and leads to deception of the purchasing public.

(*b*) That the marking and/or calling of watchcases for distribution and sale in interstate commerce as gold filled leads to deception of the purchasing public, in the absence of the following elements as a minimum.

(1) That they are marked in close proximity to the words "Gold filled" and as plainly as the words "Gold filled," with words or marks indicating the fineness of the gold, which shall not be less by more than three one-thousandths part than the fineness indicated.

(2) That the backs and caps are made of two sheets of gold or an alloy thereof, affixed to the surfaces of a sheet of other metal.

(3) The center, bezel, pendant, crown, and bow are made of one sheet of gold or an alloy thereof, applied to the outer surface of a sheet of other metal.

II. That the commission received the following as the opinion of the trade on the subjects covered, and will take due notice thereof when proper to do so in any proceeding pending before it:

(*a*) That manufacturers and dealers should be required to place the maker's trade-mark "conspicuously and indelibly" on the inner surface of the lid or cap.

(*b*) The sheet of gold or of its alloy affixed to the outer surface of the backs, center, open-faced bezel, pendant, crown, and bow shall not be less than three one-thousandths of one inch in thickness; the sheets of gold or its alloy affixed to the inner surfaces of the backs, to the inner and outer surfaces of the caps, and to the outer surface of the hunting bezel, shall not be less than one one-thousandth of an inch in thickness.

(*c*) That whenever the thickness of the sheets of gold or its alloy in gold-filled watchcases is indicated, the mark indicating such thickness shall only refer to the thickness of the sheets of gold or its alloy so affixed to the outer surfaces of the backs, center, open face, bezel, pendant, crown, and bow, the mark accurately indicating such thickness which shall be expressed in decimals indicating thousandths of an inch, in tests to ascertain the thickness, measurements being taken at a point where no gold has been added or taken away for decoration or ornament.

By the commission (Commissioner Nugent dissenting).

OTIS B. JOHNSON, *Secretary.*

The following dissenting memorandum was filed by Commissioner Nugent:

I am in favor of requiring the manufacturers to place on each watch the number of pennyweights of gold used, in addition to the carat fineness, which does not indicate and is not intended to indicate to the mind of the consumer anything relative to the value of the gold used.

The long-time guaranty is a fake, and as it is used for the purpose of deceiving the general public I am in accord with the proposal that manufacturers who resort to it should be proceeded against.

STANDARD SHEET MUSIC

WASHINGTON, D. C., *January 28, 1924.*

The Federal Trade Commission issues the following statement with respect to the trade practice submittal held before Commissioner Van Fleet by the publishers of standard sheet music (Assistant Chief Examiner H. L. Anderson and Attorney H. A. Babcock, of the commission, were present):

At the request of Mr. Alfred L. Smith, secretary of the Music Publishers Association of the United States, a trade practice submittal was held with the Federal Trade Commission on October 2, 1923, for the purpose of giving those engaged in the industry an opportunity to express their views regarding the practice of marking musical publications at fictitious prices. The conference was held at the New York office of the commission and was attended by publishers representing 95 per cent of the total output of standard sheet music. There were also present a few publishers of popular music. The following were represented:

Fred Kraft, Edward Schuberth & Co., New York City.
Otto Jordan, Harms (Inc.), New York City.
W. M. Bacon, White-Smith Music Publishing Co., Boston.
W. M. Gamble, Gamble Hinged Music Co., Chicago.
John Hanna, Enoch & Sons, New York City.
M. Keane, Boosey & Co., New York City.
C. C. Church, C. C. Church & Co., Hartford, Conn.
M. E. Tompkins, G. Schirmer (Inc.), New York City.
H. W. Gray, H. W. Gray & Co., New York City.
E. F. Bitner, Leo Feist (Inc.), New York City.
Harold W. Robinson, B. F. Wood Music Co., Boston.
C. A. Woodman, Oliver Ditson & Co., Boston.
H. B. Crosby, Arthur P. Schmidt Co., Boston.
Clayton F. Summy, Clayton F. Summy Co., Chicago.
G. Fischer, J. Fischer & Bro., New York City.
W. Deane Preston, jr., B. F. Wood Music Co., Boston.
W. H. Witt, W. H. Witt Music Co., Pittsburgh.
E. C. Mills, chairman Music Publishers' Protective Association.
W. L. Coghill, John Church Co., New York City.
H. Engel, Richmond-Robbins (Inc.), New York City.
Ben Bornstein, Ager, Yellen & Bornstein, New York City.
J. M. Priaulx, Charles H. Ditson Co., New York City.
E. T. Paull, E. T. Paull Music Co., New York City.
W. A. Walling, Evans Music Co., New York City and Boston.

R. L. Huntzinger, R. L. Huntzinger, New York City.

T. J. Donlan, National Association of Sheet Music Dealers, New York City.

Joseph M. Skilton, G. Schirmer (Inc.), New York City.

Alfred L. Smith, Music Publishers Association of the United States.

Theodore Presser, Theodore Presser Co., Philadelphia.

W. Kretschner, Carl Fischer, New York City.

The purpose of the meeting and the powers of the commission were explained by Commissioner Van Fleet, after which the discussion proceeded. A brief summary of the facts developed is as follows: It appears that for many years it has been the practice of the publishers to print sheet music at prices approximately one-third higher than the actual retail selling price. The practice arose from the custom of granting to music teachers a discount, usually one-third, from the price printed on the publication, which was to compensate teachers for their time in selecting the music, etc. After awhile teachers had their pupils request the discount and in a few years the public were getting the same discount, so that to-day the actual retail price of much of the music sold is substantially less than the printed price on the publication. As one of the publishers present expressed it, "the printing of a price on music from which to figure a discount is out of date and no longer serves any useful purpose and no doubt opens up a way to the unscrupulous to charge a higher price to unsuspecting persons than is contemplated by the publisher." It appears that the elimination of this practice has been the subject of discussion by the industry for some time. The music dealers and popular music publishers present also favored the discontinuance of the practice.

After discussing the subject and the details incidental to making a change in the practice, the publishers of standard sheet music unanimously adopted the following resolution:

We believe the proper way of marking prices on music is to use the price at which it is expected the music will sell for at retail under conditions of normal competition.

The Federal Trade Commission approves the resolution as set out above, and believes that it expresses the views of the entire industry. The trade has been requested to fix a date at which the change shall be put in operation.

SUBSCRIPTION BOOK PUBLISHERS

WASHINGTON, D. C., *July 31, 1924.*

At the request of the Subscription Book Publishers Association a trade practice submittal was held with the book publishers selling

books by subscription, in Washington, D. C., on May 20 and 21, 1924. Commissioner John F. Nugent presided at the conference and was assisted by Attorney H. L. Anderson.

It was found that many of the publishers who sell books by subscription are not members of the association. The association has 28 members, although the number of concerns engaged in this line of business outside of the association is probably twice that number. An attempt was therefore made to ascertain the views of those outside the association with respect to the question as to whether a trade practice submittal was desired. Those publishers were notified of the practices which the association desired to discuss at the meeting and were also advised that the discussion would not be limited to those practices and that other practices which publishers, not members of the association, might desire to present would be considered. Many replies were received expressing an interest in such a meeting, so that the date was set. Invitations were sent to all members of the industry whose names were furnished to the commission.

The following concerns were represented:

The Grolier Society, New York City.
University Society (Inc.), New York City.
The National Home and School Association, Chicago, Ill.
Bufton Publishing Co., Kansas City, Missouri.
Subscription Book Publishers Association, Chicago, Ill.
E. E. Compton & Co., Chicago, Ill.
P. E. Collier & Son Co., New York City.
Thomas Nelson & Sons, New York City.
Wm. H. Wise & Co., New York City.
Doubleday Page & Co., Garden City, N. Y.
W. F. Quarrie & Co., Kansas City, Mo.
Williams & Wilkins Co., Baltimore, Md.
The Encyclopedia Brittanica (Inc.), New York City.
National Association of Book Publishers, New York City.
The S. A. Mullikin Co., Cincinnati, Ohio.
Austin Jenkins Co., Washington, D. C.
Nelson Doubleday (Inc.), Garden City, N. Y.
The Midland Press, Chicago, Ill.
Parke, Austin & Lipscomb (Inc.), New York City.
The John C. Winston Co., Philadelphia, Pa.
Dodd, Mead & Co. (Inc.), New York City.
Historical Publishing Co., Philadelphia, Pa.
John Rudin & Co. (Inc.), Chicago, Ill.
The Western Distributing Co., Chicago, Ill.
Standard Education Society, Chicago, Ill.
Review of Reviews Corporation, New York City.

Rand McNally & Co., Chicago, Ill.
Educators Association, New York City.
The S. L. Weedon Co., Cleveland, Ohio.
The Bureau of National Literature (Inc.), New York City.
American Educational Society Publishers, St. Louis, Mo.

Thirty-one concerns were represented at the meeting and it was there stated that they do more than the majority of the volume of said business of the country. Many other concerns expressed an interest in the meeting, but were unable to be represented.

After a preliminary discussion of various practices, the representatives of the concerns mentioned were requested to and did organize for the purpose of adopting resolutions by which the opinion of the trade might be registered and the following resolutions, which have been certified by the chairman and secretary of the meeting, were adopted.

1. *Resolved*, That we disapprove any editorial policy whereby the listing of any name as editor or contributing editor tends to practice deception on the public.

2. *Resolved*, That as to all books, the use of only the last date of copyright, and eliminating all previous copyright dates, is condemned.

3. *Resolved*, That books bound in substitutes for leather should not be represented as being bound in levant or in any way which tends to carry the inference that leather bindings are used.

4. *Resolved*, That the same or essentially the same set of books should not be sold simultaneously under different titles; that books should never be sold under a title that will mislead as to contents, or under a title which tends to confusion with some previously published work.

5. *Resolved*, That the marking up of the price of books and the use of the so-called "raised" contract be condemned; that representing that the price asked is below the usual price, or that the price will soon be increased, when such is not the fact, be also condemned.

6. *Resolved*, That when so-called extension revision or continuation service is offered the contract made with the purchaser shall state precisely what the service is, that such service is sold at a price distinct and apart from the books which it is designed to keep up to date, that the books shall be sold at a stipulated price, and the service shall be sold at a stipulated price; that in case such service is sold to continue over a period of years the service shall actually be furnished as promised to such subscriber without the use of coupons or other form of request.

7. *Resolved*, That the practice of representing that a certain number of books have been set aside for advertising purposes, to be given free, when such is not the fact, is condemned; and that the practice of representing that a certain number of selected persons in each community have been designated to secure a book or a set of books, or any form of service, free, when such is not the fact, is clearly misrepresentation, and is condemned.

8. *Resolved*, That the offering of membership in societies, clubs, and other organizations, which in fact do not exist, in connection with the sale of books be condemned; that a service devoted to the answering of inquiries, if offered, be represented only as such, and not as something offered by some organization separate and apart from the concern selling the books, when such organization does not exist in fact and actually renders no such service; and the

names of well-known authors, editors, or authorities should not be used in connection with such offers unless they, in fact, actually are to answer or supervise the answering of the inquiries.

9. *Resolved*, That the practice of securing agents by misleading or dishonest promises or guaranties, and enticing away the agents of competitors by such means, be condemned, but nothing in this resolution shall be construed in any way limiting the free choice of agents to select their own employers.

10. *Resolved*, That the practice of giving with services or sets premiums of books, service, or other objects of value shall not be abused by sales representations of which the effect is to deceive the purchasers as to the relative values of the set or service as compared with the premium accompanying it.

11. *Resolved*, That no publisher shall be a party to or assist in the organization of so-called independent agents or dealers to sell his books by methods here condemned and which he as a publisher professes himself not to use; nor shall a publisher sell his books to so-called independent agents or dealers or agents when he knows they are to use unfair or dishonest means to distribute the books to the public. No publisher shall be a party to doing indirectly what he professes not to do directly.

12. *Resolved*, That it shall be an unfair practice to take a name which so closely resembles the name of an already existing firm as to tend to cause confusion and mislead the public.

13. *Resolved*, That all testimonials should be genuine and apply to the book or books actually offered; that generally the complete testimonial should be given; and that in cases where only a part is used, such part should fairly state the name of the writer, and in no case shall words, phrases, or sentences be taken from a testimonial and be used for selling purposes which when taken from their context have a different meaning from that intended by the writer; that public bodies, libraries, or associations should not be advertised or represented as commending a set of books unless advised as to the use of such commendation, and unless the fact is that the public body, library, or association as such and not merely some individual has commended the work and that no testimonial from any source whatsoever which has been obtained by purchase, gift, or honorarium be used; securing testimonials by such means, whether by more or less open or by subtle methods is condemned.

14. *Resolved*, That these resolutions, in so far as practicable, become effective at once, except that where any change in an existing edition of a book or set of books may be required, these resolutions apply to all future editions or printings.

With the exception of resolution No. 10, the resolutions as stated above were adopted by the members of the industry present unanimously. Attention is also directed to the fact that it is the intention of the industry to put these resolutions into effect immediately.

The above resolutions were reported to the commission and after consideration were received and approved.

BAND INSTRUMENT MANUFACTURERS

SEPTEMBER 15, 1924.

The Federal Trade Commission to-day released the following statement respecting a trade practice submittal held before Commis-

sioner Van Fleet by the manufacturers of band instruments, at Chicago, Ill., on July 15, 1924.

At the request of the manufacturers of band instruments a trade practice submittal was held before Hon. Vernon W. Van Fleet, commissioner representing the Federal Trade Commission, at Chicago, Ill., on July 15, 1924, for the purpose of affording those engaged in the industry an opportunity to express their views relative to alleged unfairness of certain practices which had prevailed in the industry. Those present at the meeting were:

F. A. Buescher, representing the Buescher Band Instrument Co., Elkhart, Ind.

James A. Bell, representing the Buescher Band Instrument Co., Elkhart, Ind.

C. H. Taylor, representing Frank Holton & Co., Elkhorn, Wis.

J. C. Cox, representing Frank Holton & Co., Elkhorn, Wis.

A. P. Bassett, representing the Martin Band Instrument Co., Chicago, Ill.

C. H. Flint, representing the E. A. Couturier Band Instrument Co., Lyon & Healy (Inc.), William Frank Co., Chicago, Ill.

Alfred L. Smith, representing the National Association of Band Instrument Manufacturers, New York City.

It appeared that the industry had theretofore agreed upon a code of ethics for the government of their business, which was announced on January 1, 1924, in a bulletin entitled, "Announcement of Elimination of Secret Subsidies to Musicians," which bulletin is in words and figures as follows:

ANNOUNCEMENT JANUARY 1, 1924

The use, ownership, or recommendation of any make of band instrument by a professional musician, or by any other person who for some reason may be supposed to be specially well informed about or have an exceptional opportunity to judge the real merits of band instruments, is accepted by the buying public as indicating honest preference for that make of instrument, based solely on merit. Thus a false and misleading impression is created when there has been a secret inducement of any kind.

The subsidizing secretly of prominent musicians and others by manufacturers and dealers in band instruments for the advertising value to be derived therefrom, has developed or tended to develop unfair competition, improper trade practices and unfair price discrimination to buyers, and has misled the public. Such a condition of affairs is detrimental to the best interest of both the industry and the buying public.

There are various methods of subsidizing professional musicians. It has been a more or less common practice to give to bands, orchestras, and individual musicians the instruments they require professionally. Sometimes the instruments have been merely loaned. Also in a few cases prominent professional musicians have been paid salaries to induce them to use certain instruments.

Not all subsidies, however, are direct. Preferential discounts, special instruments at regular prices, extra plating or engraving on instruments without charge, abnormal allowances for used instruments taken in exchange, i. e., "traded in," special terms of credit, subscriptions to or payments of advertising or other expenses of musical enterprises or organizations are typical indirect subsidies.

The granting of subsidies has been by no means confined to prominent professional musicians. A secret special discount to an influential member of the village band is no different in effect from the payment of a large salary to an artist of international reputation. He may be any person whose ownership or advocacy of a particular make of band instrument for some special reason adds to the reputation of that instrument in the community.

Even when no subsidy is involved, the granting of excessive allowances for used instruments taken in exchange is against public interest. It constitutes price discrimination, and is unfair to customers who have no instruments to exchange or who trade in their instruments at a fair valuation. Over allowances are conducive to the development of misleading and improper trade practices, such as quoting fictitiously high prices and making false reductions on new instruments when no used instrument is taken in exchange. Furthermore, a consistent policy of granting over allowances on used instruments leads inevitably to either business failure or to a regular policy of overpricing of new instruments to the consequent detriment of the buying public. The evil of granting overallowances is frequently promoted by ignorance of the real value of the instrument taken in exchange and the difficulty of obtaining accurate information on that subject.

In view of these facts and in the public interest, the undersigned manufacturers and dealers in band instruments do hereby agree not to subsidize musicians or others in any manner whatsoever, and to this end they agree specifically:

1. That they will not give away instruments to prominent musicians or others;

2. That they will not loan instruments for the purpose of having them used by prominent musicians or others;

3. That they will not pay salaries, fees, or gratuities to induce prominent musicians or others to use or recommend their instruments;

4. That they will not grant to prominent musicians or others secret discounts or rebates, or special terms not available to retail customers generally; and

5. That they will not grant allowances in excess of the actual value of secondhand instruments taken in exchange for new.

C. Bruno & Sons; Buegeleisen & Jacobson; Buescher Band Instrument Co.; C. G. Conn (Ltd.); E. A. Couturier Band Inst. Co.; Cundy-Bettoney Co.; W. J. Dyer & Bro.; Carl Fischer; William Frank Co.; Fred Gretsch Mfg. Co.; Frank Holton & Co.; J. W. Jenkins' Sons Music Co.; Leedy Mfg. Co.; Ludwig & Ludwig; Lyon & Healy (Inc.); Martin Band Instrument Co.; Pan-American Band Inst. & Case Co.; Harry Pedler Co. (Inc.); H. & A. Selmer (Inc.); The Vega Co.; H. N. White Co.; Rudolph Wurlitzer Co.; J. W. York & Sons.

At said meeting of July 15, 1924, there was also presented a letter from C. G. Conn Co. (Ltd.), signed by C. D. Greenleaf, president of said company, and also president of the Association of Band Instru-

ment Manufacturers, which letter is in the words and figures following:

ELKHART, IND., *July 14, 1924.*

FEDERAL TRADE COMMISSION,
14 West Washington Street,
Chicago, Ill.

GENTLEMEN: I regret very much that I am prevented by illness from appearing before the commission at this time. I wish to assure the commission that this company is in hearty accord with the so-called code of ethics as adopted by the leading manufacturers and jobbers of musical instruments, copy of which is inclosed.

I believe that this agreement marks the beginning of a very desirable reform which will be entirely in the public interest in every way, and that if the Federal Trade Commission sees fit to give to this agreement its formal approval, this approval will be of great assistance in securing adherence to the provisions of this agreement by the retail trade. The signatories to this agreement may be depended upon to carry it out, but, of course, there is no way by which the manufacturers can prevent their dealers from continuing these very vicious practices if they so desire. The approval of these principles, however, by the Federal Trade Commission would have a very great effect in bringing about the compliance on the part of the retail trade in general, and if this can be done I believe that these practices which have been so long an evil and a detriment to the public interest can be finally stopped.

Yours very truly,

C. D. GREENLEAF, *President.*

It was represented to the commissioner that practically the entire industry was represented in the agreement set forth above. The parties undertaking to observe this code of ethics are composed of manufacturers and importers of band instruments, and they requested and petitioned the Federal Trade Commission to give its approval to the principles laid down in said bulletin and to announce the same to the industry and the public.

After consideration of the matter, it was concluded by the commission as follows:

1. That the commission accepts and approves the code of ethics so adopted by the manufacturers of band instruments so far as the same relates to the subsidizing of musicians, and will take cognizance of violations of the same, and

2. That as to other matters covered by said code of ethics the commission receives and takes note of the same as representing the views and opinions of the industry.

"ENGRAVED EFFECTS" PRINTING [6]

WASHINGTON, D. C., *January 18, 1925.*

At the request of the engraved-effect group of the New York Employing Printers Association, a trade-practice submittal was held

[6] Among cases involving practices condemned by the industry in which the commission issued orders to cease and desist is the following: Process Engraving Co., Docket No. 1017.

by the industry before Federal Trade Commissioner Charles W. Hunt, Assistant Chief Examiner H. L. Anderson, and Attorney H. A. Babcock, representing the commission, for the purpose of considering the use of the terms "engraved effects" and "embossed effects" as applied to a form of raised printing. The submittal was held at the New York office of the commission, 105 West Fortieth Street, October 28, 1924. According to the best information available, there are approximately 165 concerns in the United States making a specialty of this class of work, all of whom were invited to the meeting.

The form of printing referred to is done on a regular printing press with a slow-drying ink and sprinkled with a rosin or shellac base powder. The work is then subjected to a heating process, which fuses the powder and the ink and hardens when cool. This produces a raised surface which may be either a bright or dull finish. Several terms have been suggested for this type of work, among them being "engravotype," "embossotype," "thermotype," "embossograph," "cameograph," and "raised" or "relief" printing. There was some objection to most of these terms. Particular objection was made to the use of the term "raised" or "relief" printing on the ground that these terms are applied to a different process and a product which the industry believes very inferior to the class of work being considered. The discussion, therefore, was devoted chiefly to the use of the terms "engraved effects" or "embossed effects."

Thirty-four concerns, engaged primarily in this type of work, were represented either in person or by proxy at the meeting. These were as follows:

Non-Plate Engraving Co. (Inc.), New York City.
Engravo Co., New York City.
Wallace Brown, New York City.
Plateless Engraving Co., New York City.
Embossograph Co., New York City.
The Embossotype Co., Pittsburgh, Pa.
Wedlaw Art Press, Kansas City, Mo.
Standard Press, Boston, Mass.
John Gwyer Press, Pittsburgh, Pa.
Murdock-Kerr Co., Pittsburgh, Pa.
Challinor-Dunker Co., Pittsburgh, Pa.
Squirrel Hill Printing Co., Pittsburgh, Pa.
A. J. Heilman, Pittsburgh, Pa.
D. K. Murdock Co. (Inc.), Pittsburgh, Pa.
Landeck Press (Inc.), Pittsburgh, Pa.
J. T. Lyman Co., Pittsburgh, Pa.

Chas. A. Deitz, Philadelphia, Pa.
Plateless Engraving Co., by P. J. Haynes.
Albrecht Printing, Scranton, Pa.
D. O. Koss Co., Detroit, Mich.
United Printing Service, West New York, N. J.
Commonwealth Press, West New York, N. J.
Saxler & Pfeifer, Buffalo, N. Y.
Charles W. Taylor, Gloversville, N. Y.
Frank Otter, Knoxville, Tenn.
Mosbruius Printing Co., Milwaukee, Wis.
W. T. Powell Printing Co., Norfolk, Va.
White Bottrell & Page Co., Meriden, Conn.
Graham Printing Co., Detroit, Mich.
Paramount Printing Co., Knoxville, Tenn.
Gillett & Co., Milwaukee, Wis.
H. J. Palmer, Chicago, Ill.
Stevens Printing Co., Milwaukee, Wis.

The following resolution was unanimously adopted:

Resolved, That the term "engraved or embossed effects" be the name for the industry producing such effects without the use of copper plates or steel dies.

The request for the submittal was granted by the commission with the understanding that representatives of the copper plate and steel die branches of the industry be permitted to attend and take part in the meeting. Twelve representatives of this branch of the industry were present and upon the submission of the resolution set forth above favoring the use of the term "engraved or embossed effects," presented the following resolution:

The steel and copper plate engraving industry, as represented in this meeting, is opposed to the use of the titles "engraved effects" and "embossed effects," or any similar title which incorporates any form of the words "engraved" or "embossed" to describe raised printing, believing that the use of such terms has a tendency and capacity to deceive the public. We offer no objection to the two suggestions made by Mr. Wallace Brown that the title for the product in question be either "thermograph" or "cameograph."

The commission, as a result of this submittal, desires to announce to the trade and the public that it disapproves the use of the terms "engraved effects" or "embossed effects" as applied to the type of work discussed and that it can not approve the use of the words "engraved" or "embossed" in any form as applied to a product not made from copper plates or steel dies.

USE OF TERMS "ENGRAVED" AND "EMBOSSED"

WASHINGTON, D. C., *June 19, 1925.*

On January 18, 1925, the Federal Trade Commission announced, as a result of the trade practice submittal held with the so-called raised-printing industry, that it disapproved the use of the terms "engraved effects" or "embossed effects" as applied to the type of work under discussion and that it could not approve the use of the words "engraved" or "embossed" in any form as applied to a product not made from copper plates or steel dies. Later, in the consideration of certain applications for complaints before the commission involving the use of the word "embossed," there arose some question as to whether the term might not be applied to certain forms of raised printing. As a result the commission, on June 19, 1925, held an informal conference with representatives of the so-called raised-printing industry, the steel and copper plate engraving industry, and the Bureau of Engraving and Printing for the purpose of securing additional information on this point.

The following were present at the hearing:

Mr. Richard O. H. Hill, of the Non-Plate Engraving Co., New York, representing about 43 other firms by proxy.

Mr. Louis A. Hill, with the Hill Agency, formerly Director of the Bureau of Engraving and Printing.

Mr. George S. Franklin (of the firm of Karl T. Frederick, New York).

Mr. Theo. A. Isert, representing the steel and copper plate engraving industry.

Mr. John J. Deviny, assistant Director Bureau of Engraving and Printing.

Mr. Henry I. Wilson, from the Bureau of Engraving and Printing.

Mr. William John Eynon, formerly president of the Typothetae of America.

Statements with respect to the subject were made by the above parties, the discussion being limited to the questions concerning the use of the term "embossing."

As a result of the conference, the commission desires to announce to the trade and the public that no change will be made in the statement issued on January 18, 1925, with respect to the use of the terms "engraved" and "embossed."

ANTI-HOG-CHOLERA SERUM AND VIRUS

WASHINGTON, D. C., *June 4, 1925.*

The Federal Trade Commission to-day released the following statement respecting the results of a trade practice submittal in the above industry.

The meeting was conducted by Commissioner Hunt, assisted by Chief Examiner Millard F. Hudson, at Omaha, Nebr., on March 18, 1925. The trade was represented by at least 80 per cent of volume of the production of the industry and was fairly representative. Following are the concerns present and those who represented them:

Corn Belt Serum Co., by Robert Rives, president.

Guilfoil Serum Co., J. H. Guilfoil, owner.

United Serum Co., Geo. H. Rasch, president.

The Johnson Serum Co., Wm. J. Miller, president.

The Fostoria Serum Co., H. D. Sheeran, secretary and treasurer.

The Simonson Serum Farm, Peter Simonson, owner.

The Royal Serum Co., Clay W. Stephenson, president.

The Southwestern Serum Co., J. M. Cory, president.

West Plains Serum Co., Geo. H. Rasch, proxy.

Swine Breeders Pure Serum Co., by F. W. Lightfoot, president.

Aurora Serum Co., by L. B. Huff, president.

Fort Dodge Serum Co., by D. E. Baughman, president.

Platte Valley Serum Co., by L. B. Wolcott, president.

Ralston Serum Co., by Chas. P. Sneed, sales manager.

Blue Cross Serum Co., by L. R. Furry, owner.

Gregory Farm Laboratory, by Dean Corsa, member of firm.

Superior Laboratories Corporation, C. H. Goebel, president.

Lathrop Serum Co., by H. F. Brown, member of firm.

Kaw Valley Serum Co., by T. H. Murphy, owner.

Sihler Serum Co., by C. J. Sihler, president.

Missouri Valley Serum Co., by G. I. Blanchard, president.

Cedar Rapids Serum Co., L. B. Graham, president.

Kansas Serum Co., August Peak, owner.

Pitman Moore Co., Edw. G. Cahill, vice president.

Corn States Serum Co., by G. H. Williams, president.

Grain Belt Supply Co., by R. M. Young, president.

Globe Laboratories, by John Kennedy, president.

Sioux Falls Serum Co., by W. R. Laird.

The Purity Serum Co., D. W. McAhern.

Liberty Laboratories, by John H. Copenhaver, president.

Sioux City Serum Co., by W. F. Gilchrist, president.

Diamond Serum Co., J. L. Robinson.

The Hevner Serum Co., C. W. Hevner, president.

Hamilton Chemical Co., J. C. McDaniel, president; C. C. Allin, secretary-treasurer.

Anchor Serum Co., W. J. Kennedy, vice president and sales manager.

American Serum Co., T. B. Huff.

The following firms were not present at the meeting but later indicated to the commission by letter that they approved the action of the industry represented at the trade practice submittal:

Central Serum Co., by F. M. Gallivan, general manager; Jensen-Salisbery Laboratories (Inc.), G. G. Graham, secretary-treasurer; Western Laboratories Serum Farm, A. I. Sorenson, V. S.

The purpose of the meeting and the powers of the commission having been duly explained, the representatives of the industry organized by selecting a chairman and a secretary. A full discussion of alleged unfair practices prevalent in the industry was then had and at the close the following preamble and resolutions were unanimously adopted:

PREAMBLE

The following business practices of those engaged in the manufacturing and marketing of anti-hog-cholera serum and virus, hereinafter referred to as serum and virus; their agents, distributers, or representatives, are hereby declared unfair as placing undue, unnecessary, unproductive, and unequally distributed burdens upon those engaged in the said industry, as tending to stifle and suppress competition and create monopolies, and creating unecessary, unproductive, and unequally distributed costs on farmers engaged in hog raising and marketing in the United States.

1. Inducing of employees of competitors to violate contracts or enticing away employees of competitors in such numbers or under such circumstances as to constitute a conversion and an appropriation of the value created at the expense of the said competitor.

2. False and misleading advertising in this industry, regarding the nature of sales outlet, and the making of untruthful claims, intending to deceive purchaser or user, as to the quality of said articles, its source and method of preparation.

3. Disparagement of officers, employees, and products of competing concerns. Circulation of false rumors of financial standing of competitors.

4. Granting of gratuities, directly or indirectly, to purchasers of serum and virus for the purpose of influencing the purchase of such commodities, which practices are generally characterized as forms of commercial bribery, more particularly as follows:

(*a*) Direct or indirect lavish, excessive, or prearranged entertainment of purchasers of serum and virus.

(*b*) Making of excessive personal gifts to purchasers of serum and virus or to their families.

(*c*) Giving virus without charge to purchasers, except for replacement of virus, shipped within 10 days of its expiration date.

(*d*) Giving of accessories, syringes, or instruments, or repairing same without charge to purchasers of serum and virus.

(*e*) Promising or allowing unearned discounts to certain purchasers of serum and virus, which are not allowed to the general trade.

(*f*) Payment or rebating to certain purchasers of serum and virus interest on borrowed money, and not allowed to the general trade.

(*g*) Payment of maintenance and refrigerator charges to and in behalf of certain retail purchasers, not allowed to the general trade.

(*h*) Donating funds or providing banquets or other entertainments for associations.

(*i*) Donating veterinary service to veterinarians, except as is necessary in determining whether product sold has served its purpose in specific cases.

(*j*) Payment of specific advertising expenses in behalf of certain purchasers, and not offered to all purchasers, under like terms and conditions.

(*k*) No veterinarian or other professional vaccinator, distributer, or otherwise, shall be paid or allowed directly or indirectly a rebate, salary, commission, or refund for serum or virus used by him which is not offered to the general trade.

(*l*) Supplying serum or virus for revaccination without charge is declared to be unfair and an unfair method of competition.

(*m*) Companies selling to both the laity and the veterinarians shall not rebate or pay a commission to the veterinarian for any serum sold to the farmer.

(*n*) It shall be considered to be unfair to obtain business by threats or coercion.

5. Engaging in practices unfair and injurious to the industry and to the public, which are:

(*a*) Guaranteeing against advance and protection against declines in price of serum and virus.

(*b*) Giving, or offering to give, premiums, instruments, biological and pharmaceutical supplies, or anything of substantial value not otherwise specifically provided for, as an added inducement to effect sales of serum and virus.

(*c*) Granting of rebates, refunds, credits, or allowing unearned discounts to purchasers of serum and virus to induce or retain patronage.

(*d*) The making of contracts with purchasers of serum and virus which permit price reductions or rebates on the basis of the combining of separate orders.

(*e*) Making of yearly contracts, or for other specified period, for sale of serum and virus at specified prices, for an unspecified amount or quantity of serum or virus, for delivery as ordered throughout the year or specified period.

(*f*) Price discrimination is an unfair method of competition.

(*g*) The consignment of serum and virus to the veterinarians, county agents, or any person administering for others, or to consumers for subsequent sale.

(*h*) Making of contracts for the sale of serum and virus which require delivery of a specified quantity in specified times, if demanded by purchaser, but which does not require such purchaser to accept such quantity within the same period.

After consideration of the entire record in this matter, the commission has reached the following conclusions:

I. That the commission has reason to believe from the facts submitted to it by the manufacturers of anti-hog-cholera serum and virus (subject to further inquiry as provided in section 5 of the Federal Trade Commission act), that the following acts and practices are unfair methods of competition:

(*a*) Inducing the violation of contracts of employment by employees of competitors, and/or enticing them away.

(*b*) Advertising falsely and misleadingly as to the nature of sales outlet, and/or making untruthful claims respecting the quality, source, and method of preparation of the commodities.

(*c*) Disparaging the officers, employees, or products of competing concerns, and/or circulating false rumors respecting the financial standing of competitors.

(*d*) Obtaining business by threats or coercion.

(*e*) Discriminating in price, where the discrimination is such as is prohibited by section 2 of the Clayton Act.

II. That the commission receives the balance of such resolutions and takes note of the same as the opinion of the industry.

The resolutions so received are as follows:

1. Direct or indirect lavish, excessive, or prearranged entertainment of purchasers of serum and virus.

2. Making of excessive personal gifts to purchasers of serum and virus or to their families.

3. Giving virus without charge to purchasers, except for replacement of virus shipped within 10 days of its expiration date.

4. Giving of accessories, syringes, or instruments, or repairing same without charge, to purchasers of serum and virus.

5. Promising or allowing unearned discounts to certain purchasers of serum and virus which are not allowed to the general trade.

6. Payment or rebating to certain purchasers of serum and virus interest on borrowed money and not allowed to the general trade.

7. Payment of maintenance and refrigerator charges to and in behalf of certain retail purchasers not allowed to the general trade.

8. Donating funds or providing banquets or other entertainments for associations.

9. Donating veterinary service to veterinarians, except as is necessary in determining whether product sold has served its purpose in specific cases.

10. Payment of specific advertising expenses in behalf of certain purchasers and not offered to all purchasers under like terms and conditions.

11. No veterinarian or other professional vaccinator, distributer, or otherwise, shall be paid or allowed, directly or indirectly, a rebate, salary, commission, or refund for serum or virus used by him which is not offered to the general trade.

12. Supplying serum or virus for revaccination, without charge, is declared to be unfair and an unfair method of competition.

13. Companies selling to both the laity and the veterinarians shall not rebate or pay a commission to the veterinarian for any serum sold to the farmer.

14. Guaranteeing against advance and protection against declines in price of serum and virus.

15. Giving, or offering to give premiums, instruments, biological and pharmaceutical supplies, or anything of substantial value, not otherwise specifically provided for, as an added inducement to effect sales of serum and virus.

16. Granting of rebates, refunds, credits, or allowing unearned discounts to purchasers of serum and virus to induce or retain patronage.

17. The making of contracts with purchasers of serum and virus which permit price reductions or rebates, on the basis of the combining of separate orders.

18. Making of yearly contracts, or for other specified period, for sale of serum and virus at specified prices, for an unspecified amount or quantity of serum or virus, for delivery as ordered throughout the year or specified period.

19. The consignment of serum and virus to the veterinarians, county agents, or any person administering for others, or to consumers for subsequent sale.

20. Making of contracts for the sale of serum and virus, which require delivery of a specified quantity in specified times, if demanded by purchaser, but which does not require such purchaser to accept such quantity within the same period.

The commission, upon the foregoing, makes the following general observations:

Fair competition does not mean lessened competition. Fair competition may consist in giving a better price or better terms or better service. A number of practices condemned by the trade consist only in one of these and can not be condemned by the commission. On the contrary, an agreement not to compete in these particulars, is contrary to law.

By the commission, Commissioner Nugent dissenting in part, as per memorandum attached.

COMMISSIONERS THOMPSON AND NUGENT CONCUR IN PART AND DISSENT IN PART

We concur with Chairman Van Fleet and Commissioners Hunt and Humphrey that the practices so declared by them constitute unfair methods of competition.

We dissent, however, from their refusal to declare unfair the following practices which were condemned by the resolutions adopted by the industry:

1. Direct or indirect lavish, excessive, or prearranged entertainment of purchasers of serum and virus.

2. Making of excessive personal gifts to purchasers of serum and virus or to their families.

5. Promising or allowing unearned discounts to certain purchasers of serum and virus which are not allowed to the general trade.

7. Payment of maintenance and refrigerator charges to and in behalf of certain retail purchasers not allowed to the general trade.

8. Donating funds or providing banquets or other entertainments for associations.

10. Payment of specific advertising expenses in behalf of certain purchasers and not offered to all purchasers under like terms and conditions.

14. Guaranteeing against advance and protection against declines in price of serum and virus.

16. Granting of rebates, refunds, * * *, or allowing unearned discounts to purchasers of serum and virus to induce or retain patronage.

In our opinion, said practices, both singly and in the aggregate, are unfair, as they will suppress competition in large measure by driving out of the business of manufacturing and selling such serum and virus the smaller concerns which are financially unable to meet the cost occasioned thereby and enable the financially powerful among the manufacturers to dominate and exercise control over the

industry and place at their mercy the ultimate consumers of said products.

In our judgment, the practices above set out are also unfair to the farmers of the country who raise hogs. We do not doubt that they are now required to pay a higher price for serum and virus than they would pay if said practices were discontinued, as the manufacturers must pass on to the farmers the additional expense of conducting their business made necessary by said practices.

HUSTON THOMPSON,
J. F. NUGENT,
Commissioners.

MENDING COTTON MANUFACTURERS

WASHINGTON, D. C., *June 23, 1925.*

In accordance with the desire expressed by a majority of the manufacturers of mending cottons, a trade practice submittal was held by Commissioner Huston Thompson, assisted by Attorney Henry Miller, in New York City, on June 23 and September 25, 1925, to consider the matter of the labeling or branding of mending or darning cottons, with the view of eliminating those practices which might be deemed unfair to competitors or misleading to the consumer, particularly with reference to the marking of yardage, ends, and plies. Invitations to the conference were issued to all manufacturers in the industry of which the commission had knowledge. The following concerns were represented:

Clark Thread Co., Newark, N. J.
Howard Manufacturing Co., Boston, Mass.
Dexter Yarn Co., Pawtucket, R. I.
Blodgett & Orswell Co., Pawtucket, R. I.
American Thread Co., New York, N. Y.
The Spool Cotton Co., New York, N. Y.
Amherst Manufacturing Co., Amherst, Mass.
D. E. Howard's Son & Co., New York, N. Y.
J. & P. Coats (R. I.) (Inc.), Pawtucket, R. I.
Collingbourne Mills (Inc.), Elgin, Ill.

These concerns constitute a large majority of the industry and are estimated to produce 90 per cent of the darning cotton manufactured in the United States.

The action taken by the conference consisted in the unanimous adoption of the following resolution, which was likewise unanimously agreed upon as specifying the proper method to be followed

by the industry in the branding or labeling of mending or darning cottons, and that any other method of marking would be unfair to competitors and involve confusion or deception of the consuming public:

Resolved, That in the marketing, labeling, or branding of mending cotton the following and no other, with reference to the yardage, ends, strands, or ply, shall be marked on the package or ball, and in the order stated:

The yardage as it comes off the ball or package.

The number of ends.

The number of plies per end.

The commission, as a result of this submittal, desires to announce to the trade and public that it receives the action taken by the industry as set forth above and approves the method of branding or labeling of mending cottons as prescribed in the foregoing resolution.

The commission further announced that the industry shall have until February 1, 1926, to meet the requirements for marking their product as set forth in the statement given out by the commission. The commission will thereafter entertain complaints against members who have failed to conform to the terms of the resolution adopted by the industry and approved by the commission.

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